

# Introduction

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## Mandatory Minimum Sentences

Crime and its punishment is a public policy concern the state legislature has a key role in defining. It is a judicial function to ensure the criminal laws are implemented fairly and in accordance with the law. If an arrested person is found guilty, it is a judicial function to set out the punishment of the individual on a case-by-case basis, guided by the statutory parameters set out by the legislature.

The four traditional goals of punishment are: deterrence, incapacitation (incarceration), retribution, and rehabilitation. Over the years, the political and public views have changed on how these goals are balanced and which ones to promote. These changing views affect the legislature's decisions on sentencing and impact the discretion that a judge has in his or her sentencing decisions.

Mandatory minimum sentences, first established in Connecticut in 1969 and expanded throughout the 1980s and 1990s, exemplify a shift in public policy away from other individual offender characteristics and circumstances toward imposing a specific amount of imprisonment based on the crime committed and the defendant's criminal history. A mandatory minimum sentence requires a judge to impose a statutorily fixed sentence on individual offenders convicted of certain crimes, regardless of other mitigating factors.

Based on legislator statements during debates on mandatory minimum sentence bills, the legislative purpose was multifaceted: reduce crime (and drug use); control judicial discretion over certain sentencing decisions; increase the prison sentences for serious and violent offenders; and send a message to the public and potential criminals that the legislature was taking action. In recent years, legislators have noted the impact of plea bargaining on the actual use of mandatory minimum sentencing laws whereby these sentencing laws become a plea bargaining tool as opposed to a certainty.

It should be noted that only certain crimes have absolute mandatory minimum sentences attached to them. In practice, because of a prosecutor's unilateral authority and discretion to charge an arrested person with a crime and the prevalence of plea bargaining, relatively few defendants are ever actually incarcerated under a mandatory minimum penalty. Further, in 2001, the legislature provided judges with the discretion to deviate from the mandatory minimum penalty for certain drug sale offenses based on "good cause." This type of sentence is called presumptive sentencing.

The issue of mandatory minimum sentencing generates strong political and public reactions for and against such laws. Proponents of mandatory minimum sentencing penalties believe the laws:

- are an effective deterrent against certain serious offenses such as drug and weapon crimes and sexual assault offenses;
- protect against possible disparities in sentencing;

- keep convicted offenders incarcerated for longer periods of time (which keeps these individuals off the streets, preventing new crimes); and
- aid prosecutors and police who use the possibility of lengthy prison terms to persuade lower-level offenders to testify against higher-level offenders and to convince offenders to plead guilty for a negotiated sentence.

Opponents of mandatory minimum sentences, on the other hand, argue there is no evidence that tougher sentences deter offenders from committing the specified serious offenses like drug sales. Instead, they say that over the past 15 years, the prison populations in Connecticut and nationally have increased at a dramatic rate because of the longer mandatory sentences and time-served requirements. Accordingly, this has required larger increases in state prison budgets. Opponents contend:

- minority defendants are disproportionately incarcerated compared to Caucasian defendants under the mandatory minimum sentencing laws;
- sentencing disparity is inherent in the mandatory minimum sentencing law for the sale of the illegal drugs cocaine and “crack;”<sup>1</sup> and
- many offenders sentenced under the mandatory minimum sentencing laws are by-and-large nonviolent and were not the intended targets of the sentencing policy. They also point out the serious and violent offenders who were the intended targets of mandatory minimum sentencing, absent such laws, typically receive long prison terms anyway.

Judges support appropriate and fair penalties for serious and violent offenders that are based on the nature and severity of the crime, the offender’s characteristics and criminal history, and any mitigating or aggravating factors. However, in general, judges object to the abolition of their discretion as the neutral arbiter of justice under mandatory minimum sentencing laws, and the shifting of that discretion to the prosecutors through their authority to charge a defendant with a crime and to negotiate a plea and/or a sentence.

## **Scope of Study**

Public Act 04-234 directed the Legislative Program Review and Investigations Committee to study mandatory minimum sentencing laws. The committee adopted a scope of study on April 11, 2005. As required by the public act, the study is focusing on:

- determining any impact of the state’s mandatory minimum sentencing laws on the demand for prison beds;
- evaluating the actual versus intended impact of the mandatory minimum sentencing laws on the overall criminal sentencing policy of the state; and

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<sup>1</sup> Cocaine in a freebase form is commonly referred to as “crack.”

- estimating the costs of mandatory minimum sentences and any proposed sentencing changes.

## **Methodology**

A variety of sources and methods have been used to gather information and data for this study. The program review committee analyzed all criminal cases (dockets) for which the defendant was arrested and/or convicted of an offense subject to a mandatory minimum penalty and was disposed of between January 1, 2000 and July 31, 2005. Data on drug sales (e.g., type and weight of confiscated drugs, location, and time of offense) were collected and analyzed for a random sample of drug sale cases disposed of between July 1, 2004 and July 31, 2005, in which the defendants were charged with drug sale crimes subject to mandatory minimum penalties. The program review committee also conducted a mapping analysis of the “drug-free” zones in a representative sample of Connecticut municipalities. Finally, sentencing and time-served data from the Department of Correction (DOC) were analyzed.

## **Report organization**

This report is divided into four sections. Section 1 presents the analysis of the actual versus intended impact of the mandatory minimum sentencing laws. The analysis includes the types of mandatory minimum penalty crimes for which persons are arrested, charged, and convicted and the sentences imposed for convictions of mandatory minimum penalty offenses or other offenses. The committee’s analysis of the type and weight of confiscated drugs and the mapping of “drug-free” zones are also included. Section 2 determines the impact of mandatory minimum sentences on prison resources by analyzing sentencing and time served data for those inmates serving mandatory minimum sentences. Section 3 calculates the estimated costs associated with mandatory minimum sentences. The committee findings and recommendations are presented in Section 4.

## Section 1

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### **What is the actual versus intended impact of mandatory minimum sentences on the system?**

The intended purpose of the state's mandatory minimum sentencing laws were multifaceted: reduce crime (and drug use); control judicial discretion over certain sentencing decisions; increase the prison sentences for serious and violent offenders; and send a message to the public and offenders that Connecticut is elected officials were taking action. *The mandatory minimum sentencing laws have achieved, to some extent, the intended purposes, but the actual impact is mitigated by criminal justice practices.*

There is no direct evidence to suggest that the state's mandatory minimum sentencing laws reduced the crime rate. In Connecticut, the number of arrests each year, which is the traditional measure of crime, has been steadily decreasing for almost 30 years. There is consensus among criminal justice researchers and administrators that this decline is the cumulative effect of many factors including socioeconomic changes in the population, a general downward trend in reported property crime, increased resources for the criminal justice system, and improved law enforcement techniques as well as changes in the state's crime and sentencing policies. Mandatory minimum sentencing laws are only a part of the overall sentencing framework and the crime policy in Connecticut. Therefore, a direct correlation between the adoption and administration of mandatory minimum sentencing laws and a declining crime rate cannot be made.

Based on data and information from the Division of State Police there has been no appreciable decline in drug trafficking, which includes the manufacture, sale, and possession of illegal drugs, in Connecticut. Department of Mental Health and Addiction Services data on drug use suggest there has been no sustained decline in actual drug use among Connecticut residents. However, the number of person seeking and receiving drug treatment has increased over the past 20 years.

In theory mandatory minimum sentencing laws control judicial discretion over certain sentencing decisions, but judges, prosecutors, and defense attorneys typically engage in plea negotiations in an attempt to resolve almost all criminal cases without trial. There is no prohibition against plea bargaining mandatory minimum penalty offenses. The case disposition process, either through plea bargaining or trial, is the same for mandatory minimum penalty cases as it is for any criminal case.

Mandatory minimum sentencing laws can only be as mandatory as prosecutors and judges choose to make them. Judges and prosecutors (and defense attorneys) generally in effect circumvent these laws. So while in theory mandatory minimum sentencing laws eliminate judicial discretion, in the administration of the laws, judges appear to have sufficient discretion to impose what they believe to be fair and appropriate sentences.

Most mandatory minimum penalty offenses result in a negotiated disposition whereby the defendant pleads guilty to a lesser charge or other offense not subject to a mandatory minimum penalty. In those cases, judges have discretion to impose any sentence within the statutory sentencing guidelines. For serious and violent offenses judges often impose sentences greater than the mandatory minimum penalty. As intended, serious, violent offenders are receiving increased prison terms. For drug sale and other offenses where judges have presumptive sentencing authority, they often exercise their discretion to impose less than the mandatory minimum sentence. Absent mandatory minimum sentencing laws, however, there is no evidence to suggest these sentencing trends would differ.

It appears mandatory minimum sentencing laws have served as symbols of legislative action on crime. Many legislators interviewed by program review committee believes adopting mandatory minimum sentencing laws is an effective way to convey a public message about crime and punishment while not adversely impacting the administration of justice. Many legislators recognize mandatory minimum sentencing laws are not strictly applied and that judges and prosecutors routinely engage in plea bargaining.

To determine the actual versus intended impact of the mandatory minimum sentencing laws on the overall criminal sentencing policy of the state as required by Public Act 04-234, program review committee analyzed the outcomes of the criminal justice system's application of Connecticut's mandatory minimum sentencing laws. The detailed analysis is presented below. Specifically, program review committee examined:

- types of mandatory minimum penalty crimes for which persons are arrested;
- differences, if any, in the types of mandatory minimum penalty crimes for which persons are arrested and subsequently convicted;
- prison terms imposed by judges for convictions of mandatory minimum penalty crimes; and
- differences, if any, in the court-imposed prison terms for persons arrested for and convicted of mandatory minimum penalty crimes versus persons arrested for mandatory minimum penalty crimes, but subsequently convicted of crimes not subject to a mandatory minimum penalty.

## **Sample Selection**

A sample of 33,150 criminal cases was selected based on two criteria. First, although the offense for which a person is arrested is often different than that for which he or she is subsequently convicted, the sample only includes cases in which a defendant were arrested and/or convicted for a crime subject to mandatory minimum sentences.

Second, since the focus of the study is on mandatory minimum sentencing, rather than the arrest date, the disposition (i.e., the outcome of the arrest) date was used as the starting point. To ensure all cases had an outcome -- either guilty dispositions and sentences or not guilty dispositions -- no pending (open) cases were included. Thus, the sample contains cases disposed

of between January 1, 2000 and July 31, 2005. However, only cases disposed of between January 1 and December 31, 2004 were included because they represented full year data.

The Judicial Branch's Division of Court Operations provided data about the cases in the sample, including defendant demographics (i.e., age, race, and gender), the dates of arrest and disposition, the arrest and conviction charge, the disposition, and the sentence.

A person can be charged with several crimes upon arrest and subsequently convicted of and sentenced for all or some of the crimes for which he or she was charged. Defendants can also be found not guilty or have the charges dismissed or "nolled"<sup>2</sup> by the state's attorney. For most of the cases in the sample, the crime subject to a mandatory minimum penalty was the primary charge against the defendants. Based on this, and since analyzing multiple charges is difficult, the following analysis is based on the primary charge data.

## Offender Profile

**Demographics.** The majority of the defendants arrested for mandatory minimum offenses (86 percent) were male. The offenders ranged in age from 15 to 82 years. The average age of the offenders arrested for mandatory minimum crimes was 32.

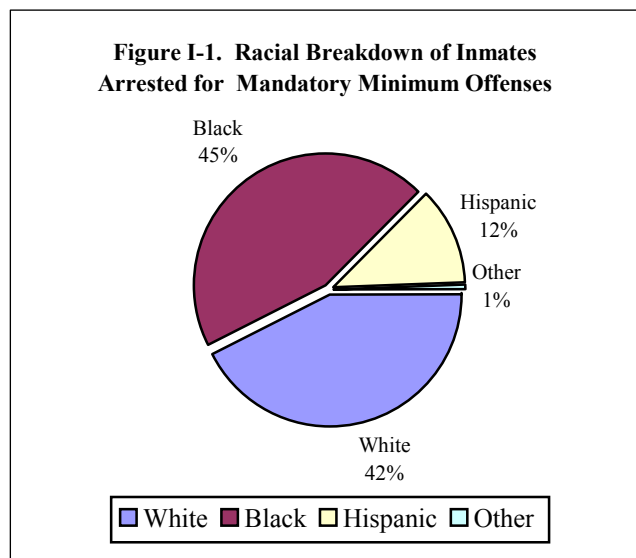


Figure I-1 shows the racial and ethnic breakdown of the offenders arrested for mandatory minimum crimes. More than 40 percent of the offenders were Caucasian. Minority offenders represented 57 percent of the sample; 45 percent were African American, and 12 percent were Hispanic<sup>3</sup>. Less than 1 percent were identified as another racial or ethnic group (e.g., American Indian, Asian).

The racial and ethnic breakdown was consistent among male and female offenders. The demographic breakdown of the offenders arrested for mandatory minimum crimes was consistent with prior analyses of persons arrested for any crime in Connecticut.<sup>4</sup>

<sup>2</sup> *Nolle prosequi* is a formal court motion by the prosecutor stating the case will not be prosecuted any further.

<sup>3</sup> Hispanic is an ethnicity not a race. The criminal justice system records Hispanic as a race. For the purposes of this study, Hispanic is a separate racial category from Caucasian and African American. Race and ethnicity data is self-reported by arrested persons and a person may report him or herself as Hispanic, Caucasian (white), or African American (black). Therefore, throughout the analysis, the actual number (and percentage) of persons arrested, convicted, and sentenced for mandatory minimum offenses within the Hispanic category may be underrepresented.

<sup>4</sup> Refer to the Legislative Program Review and Investigations Committee reports on *Factors Impacting Prison Overcrowding* (2000) and *Recidivism in Connecticut* (2001).

The racial and ethnic breakdown among convicted offenders was also consistent with that shown in Figure I-1. Fifty-six percent of the convicted offenders were identified as a minority group: 43 percent were African American, 11 percent Hispanic, and 2 percent another racial or minority group. Almost 45 percent of convicted offenders were Caucasian.

The 53 mandatory minimum penalty offenses were grouped for analysis purposes into seven offense categories.<sup>5</sup> (Refer to Appendix A for a listing the mandatory minimum offenses and penalties.) These severity offense categories are used throughout the report. They are as follows:

- **homicide:** murder and manslaughter;
- **assault:** assault, sexual assault, robbery, and kidnapping;
- **property:** burglary and larceny;
- **drug:** possession and sale;
- **weapon:** use, possession, and sale;
- **motor vehicle:** driving under the influence of alcohol or drugs (DUI), increasing speed to elude a police officer after being signaled to stop (if death or serious injury to another is involved), and driving during license suspension for a prior DUI conviction; and
- **other offenses:** including employing a minor in an obscene performance, hindering prosecution, and crimes for terrorist purposes.

The racial and ethnic breakdown by offense category is presented in Table I-1. (The other racial category is not included because it represents less than 1 percent of the total.) Half of the offenders arrested for assault and property crimes subject to mandatory minimum penalties and over 70 percent of the persons charged with motor vehicle crimes carrying mandatory minimum penalties were Caucasian. Caucasian offenders represented 60 percent of the persons arrested for other offenses.

In comparison, half of the offenders arrested for drug sale crimes and weapon offenses were African American. Weapons are a common part of drug trafficking and often people arrested for a drug sale are also charged with possession or use of a weapon. Almost half of the persons arrested for homicide were African American.

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<sup>5</sup> To conduct the analysis of the mandatory minimum arrests, convictions, and penalties, program review staff ranked all the criminal offenses defined by the penal code and other statutes (e.g., consumer protection, motor vehicle, and insurance) in terms of severity. The severity ranking is based on a three-step process. First, offenses resulting in the death of a person (e.g., murder and manslaughter) were ranked as the most serious of all crimes. Second, all other offenses, not resulting in the death of another person, were ranked based on the offense type: felony; misdemeanor; and infraction. Felonies were ranked the most serious offenses, followed by misdemeanors, and then infractions. Third, offenses within the felony and misdemeanor categories were ranked by offense class (i.e., class A, B, C, and D) and degree (first, second, third, fourth, etc). Class A offenses were ranked the most serious followed by class B, C, and D. The offenses within a crime type and class were then ranked based on the crime severity indicated by the degree. For example, all class B felonies involving physical violence were ranked as more serious than class B property crimes and “victimless” crimes. Unclassified crimes were ranked based on the statutory offense definition and punishment.

<b>Table I-1. Racial &amp; Ethnic Breakdown of Arrestees by Offense Category</b>			
<b>Offense Category</b>	<b>Caucasian</b>	<b>African American</b>	<b>Hispanic</b>
Homicide	36%	47%	15%
Assault	50%	36%	11%
Property	51%	37%	10%
Drug	36%	50%	13%
Weapon	35%	54%	11%
MV	71%	15%	6%
Other	60%	20%	13%
NOTE: Percentages may not total 100 percent due to missing race and ethnicity data. Source of data: Judicial Branch			

As shown in the table, Hispanic offenders represented less than 15 percent or less of the persons arrested for mandatory minimum offenses within any offense category. The largest percentage (15 percent) of Hispanic offenders were arrested and charged with homicide.

### **Mandatory Minimum Sentence Arrest Offenses**

Figure I-2 shows the breakdown of arrest charges by offense category for the 33,150 cases. Almost 60 percent of the charges were for drug sale crimes subject to mandatory minimum penalties. About 20 percent were assault charges and 15 percent were property charges. Less than 10 percent of the charges were for homicide, weapon, and motor vehicle offenses combined.

Almost all (88 percent) of the drug sale arrests were for the following three offenses:

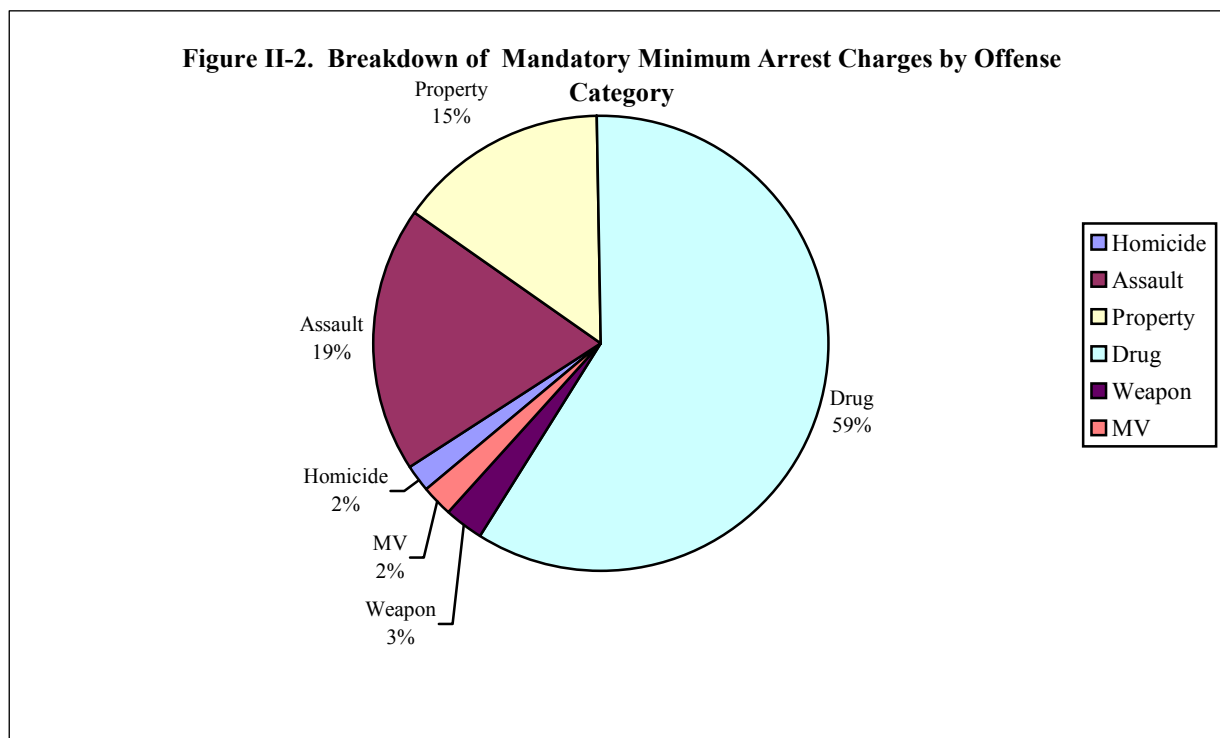
- illegal manufacture or sale by a non-drug-dependent person of any amount of narcotic, hallucinogenic (other than marijuana), or amphetamine substances or at least 1 kilogram of cannabis-type substance (C.G.S. §21a-278(b));
- sale of drug (under C.G.S. §§21a-277 or 21a-278) by a non-drug-dependent person within 1,500 feet of a school, day care center, or public housing (“drug-free” zone) (C.G.S. §21a-278a(b)); and
- possession of any quantity of narcotic, hallucinogenic (other than marijuana), or cannabis-type substances (C.G.S. §21a-279(d)).

There was a wide distribution of assault charges, with varying offense classes and degrees of severity, including assault, sexual assault, and kidnapping. There were, however, no charges for robbery in the first degree with a deadly weapon (C.G.S. §53a-134). The most frequently charged offenses in the assault category were:

- 23 percent for assault in the first degree (C.G.S. §53a-59);
- 17 percent for assault in the third degree of a special status victim (statutorily defined as an elderly, blind, disabled, pregnant, or mentally retarded person) (C.G.S. §53a-61a);



- 15 percent for forcible sexual assault in the first degree of a victim under 16 or sexual assault in the first degree of a victim under 13 if the offender is more than two years older (C.G.S. §53a-70(a)(1) and (2)); and
- 13 percent for sexual assault in the second degree of a victim under 16 (C.G.S. §53a-71).



The most frequently charged mandatory minimum penalty crimes in the other offense categories are listed below:

- **homicide:** 88 percent for murder (C.G.S. §53a-54a);
- **property:** 89 percent for larceny in the second degree from a special status victim (C.G.S. §53a-123);
- **weapon:** 74 percent for criminal possession of a firearm or electronic defense weapon (C.G.S. §53a-217) and 22 percent for criminal use of a firearm or electronic defense weapon during the commission of a felony (C.G.S. §53a-216);
- **motor vehicle:** 51 percent for driving during license suspension for prior DUI or DUI-related offenses (C.G.S. §14-215(c)), 28 percent for increasing speed to elude police after being signaled to stop (C.G.S. §14-223(b)), and 21 percent for DUI offenses; and

- **other crimes:** 73 percent for employing a minor in an obscene performance (C.G.S. §53a-196), and 27 percent for hindering prosecution (C.G.S. §53a-165aa).

### **Mandatory Minimum Sentence Conviction Charges**

After arrest, a person is charged with a crime by the state's attorney. The prosecution charge may be different than the arrest charge. As discussed in the staff briefing report, most criminal cases are disposed of through plea bargaining during which the prosecutor, defense attorney, and judge engage in negotiation over the charges pending against a defendant and the recommended sentence. Plea bargaining can lead to a number of different outcomes: a dismissal, a plea to one or more charges; a plea to the primary charge (most serious offense) or a lesser charge; or a trial. Most often a defendant will plead to the primary charge, but receive a lesser sentence, or plead to a lesser charge. In cases in which a defendant is charged with a crime subject to a mandatory minimum penalty, the incentive to plead guilty is a reduction of the charge to a crime that is not subject to a mandatory minimum penalty.

Overall, the ultimate disposition for 67 percent of the mandatory minimum arrest charges was not guilty, which includes not guilty after a trial, "nolled" by the prosecutor, and dismissed by the prosecutor or judge. The majority (84 percent) of the not guilty dispositions were "nolled." It should be noted that defendants found not guilty of the primary charge may have pled or been found guilty of other (lesser) charges for which they were arrested, but that information was not analyzed.

Only 34 percent of the primary arrest charges resulted in convictions (guilty). Table I-2 shows the percentage of defendants charged with mandatory minimum penalty crimes convicted of the same charges or convicted of lesser charges. The data are broken down by offense categories.

<b>Table I-2. Conviction for Mandatory Minimum Crimes for Same or Lesser Charges</b>		
<i>Offense Category</i>	<i>% Convicted of Same Charge</i>	<i>% Convicted of Lesser Charge</i>
Homicide	38%	62%
Assault	20%	80%
Property	50%	50%
Drug	10%	90%
Weapon	57%	43%
MV	87%	13%
Other	0	100%
Source of data: Judicial Branch		

In a majority of the cases analyzed, offenders arrested for mandatory minimum penalty crimes of homicide, assault, drug sale, and other crimes typically pled to or were found guilty

after a trial of lesser charges. Persons charged with murder were convicted of manslaughter charges. Those charged with assaults were convicted of less serious assault charges (e.g., assault in the first degree was reduced to assault in the second or third degree). Persons charged with drug sale crimes were convicted of other drug sale crimes not subject to mandatory minimum penalties or drug possession.

In comparison, however, persons arrested for property, weapon, and motor vehicle offenses subject to mandatory minimum penalties typically pled or were found guilty after a trial of the same charges. In these cases, state's attorneys did not typically lower the mandatory minimum arrest charges. It appears plea bargaining did, however, often result in the lowering or dismissal of other charges pending against the defendants in exchange for the defendant agreeing to the plea bargain with the mandatory minimum charges.

As shown in the table, almost all (87 percent) of persons charged with DUI, driving under license suspension for prior DUI convictions, and increasing speed to elude police after being signaled to stop that resulted in the death or serious injury to another person were convicted of those charges. In most cases, since the sentences for these crimes are relatively short and the crimes are politically and publicly high-profile offenses, the state's attorneys and judges interviewed stated they generally do not agree to plea bargains that result in reduced sentences.

### **Mandatory Minimum Sentences**

Connecticut has adopted two versions of mandatory minimum sentences: "traditional" mandatory minimum sentences and presumptive sentences. The difference is that a judge may exercise his or her discretion to depart from a mandatory minimum prison term under presumptive sentencing whereas under a "traditional" mandatory minimum sentence there is no opportunity for judicial discretion. All mandatory minimum and presumptive sentences require a period of incarceration. The following is an analysis of the sentences imposed in cases in which defendants were charged with mandatory minimum offenses.

Table I-3 lists the average sentence imposed upon a conviction for a mandatory minimum offense and the average sentence imposed when a defendant was convicted of a lesser or different offense other than the mandatory minimum crime for which he or she was originally charged. The table lists the most frequently charged mandatory minimum offenses within each crime category. In addition, the statutory mandatory minimum penalty for each offense is provided for comparison purposes.

As shown, when defendants were convicted of the mandatory minimum offenses for which they were originally charged, a sentence equal to or greater than the mandatory minimum was generally imposed. However, for convictions for drug sale offenses subject to presumptive penalties, the sentences imposed were slightly less than the mandatory minimum. It can be concluded, therefore, that in some cases judges are using their presumptive sentencing authority to depart from the mandatory minimum penalties.

For convictions of lesser or different offenses other than the mandatory minimum crimes originally charged, the sentences imposed are much less than the mandatory minimum penalties that the defendants could have received. This is most likely a result of plea bargaining.

A more detailed analysis of mandatory minimum sentences and the amount of time actually served in prison by convicted offenders is presented in Section 2.

In addition to a prison term, a judge may impose a period of probation. Almost all (95 percent) of the persons convicted of offenses, whether they were the original mandatory minimum offense or different offenses, were also sentenced to probation. The probationary periods ranged from one year to 25 years. The most frequently imposed probationary terms were 3 years and 5 years.

Table 1-3. Average Sentences Imposed for Mandatory Minimum and Lesser Offenses			
	<i>Mandatory Minimum</i>	<i>Average sentence for conviction of mandatory minimum offense</i>	<i>Average sentence for conviction of lesser or different offense</i>
<b>Homicide</b>			
53a-54a	25 years	32 years	11 years
<b>Assault</b>			
53a-59	5 years if weapon used 10 years if minor victim	5 years	2.7 years
53a-61a	1 year	1 year	2 months
53a-70(a)(1)	5 years	9.5 years	2.7 years
53a-70(a)(2)	10 years	10 years	3 years
53a-71	9 months	2 years	1 year
<b>Property</b>			
53a-123	2 years	2 year	6 months
<b>Drug</b>			
21a-278(b)* 1 <sup>st</sup> conviction subsequent convictions	5 years 10 years	5 years	2 years
21a-278a(b)*	3 years	2.7 years	2 years
21a-279(d)*	2 years	7 months	1 year
<b>Weapon</b>			
53a-217	2 years	2.7 years	1.5 years
53a-216	5 years	-	5.9 years
<b>MV</b>			
14-227a(g): 2 <sup>nd</sup> conviction	120 days	142 days	1 day
14-227a(g): 3 <sup>rd</sup> or more convictions	1 year	1.5 years	-
14-215(c)*	30 days	45 days	9 days
14-223(b)	1 year	60 days	-
* Subject to presumptive sentencing. NOTE: C.G.S. §§21a-278a(b) and 21a-279(d) functions like a sentencing enhancement. The mandatory minimum penalty is in addition to the sentence imposed for the underlying drug sale offense. Source of data: Judicial Branch			

## Drug Types and Weight Analysis

Connecticut's drug sale laws establish mandatory minimum penalties based on three factors: (1) type and weight of certain drugs; (2) proximity of drug sale to "drug-free" zones; and (3) offender drug-dependency status. These factors are examined below.

State drug sale laws treat non-drug-dependent persons and drug-dependent persons differently. Non-drug-dependent offenders are characterized as being in the drug trafficking business for profit whereas drug-dependent persons, who are addicted, often sell drugs or commit other crimes to buy drugs for their personal use. State sentencing laws have established alternative sentencing options and treatment programs for drug-dependent offenders.

Drug dependency may be stipulated to by the prosecuting and defense attorneys during plea negotiations or substantiated through substance abuse treatment evaluation. No data were available, however, to determine the impact of this factor on mandatory minimum conviction and sentencing trends.

Certain illegal drugs are identified as more dangerous and serious based on characteristics such as their addictive properties. The statutory penalties for the sale of those drugs in certain quantities is, therefore, more severe.

Over the past 20 years, the mandatory minimum penalty laws for certain drug sale crimes have increasingly been criticized for several reasons. Opponents argue the statutory drug type and weight thresholds are not based on actual drug use trends and impact all offenders, not just the drug traffickers. They contend the laws result in disproportionate and unduly harsh sentencing of drug sale offenders, particularly minority offenders.

To examine the impact of the drug type and weight threshold, a random sample of 300 drug sale arrests in which the defendant was subject to a mandatory minimum penalty was reviewed. The program review committee collected data on and analyzed:

- types and weight of illegal drugs confiscated;
- location, date, and time of the drug sale offenses; and
- complainant's and/or victim's age and relationship to the arrested person.

**Sample.** The random sample of 300 mandatory minimum penalty drug sale cases was selected from the original database used for the mandatory minimum sentencing trend analysis presented above. The cases were disposed of in the following judicial districts including Part A and Part B courts: Ansonia/Milford; Danbury; Fairfield; Hartford; Middlesex; New Britain; New London; Stamford; Tolland; and Waterbury.<sup>6</sup>

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<sup>6</sup> The New Haven and Windham judicial districts (Part A and B courts) and the Norwalk, Enfield, and Manchester geographical area courts failed to provide timely access to drug sale case files for inclusion in this report. Additionally, some cases in other courts were not available for various reasons including their referral to the Community Court for disposition.

Data on the confiscated drug type and weight were not available in an automated format. The program review staff collected the data from state's attorney prosecution case files. Due to the Division of Criminal Justice's record-retention practices, those files were only available for the past 18 months. It is state's attorney practice to maintain case files for about one year after disposition after which the files are archived. Therefore, only drug sale cases disposed (closed) between July 1, 2004 and July 31, 2005 were reviewed.

**Data.** In most cases, the drug type and weight data were retrieved from the incident reports filed by the arresting police departments, which are part of the state's attorney case files. The police typically conduct field drug tests on confiscated substances to determine the type and weight of the drug. While accurate in identifying the type of drug, the police reports at times only estimate the weight of the drug by providing a description of its packaging. For example, police reports commonly report a "glassine bag" of heroin, a "small, plastic baggie" of "crack" cocaine, a "ziplock bag" of marijuana, or a specific number of pills were confiscated rather than listing the actual weight of the drugs. All available weight data were converted to grams for analysis purposes.

In some cases, the prosecutor's file also contained a scientific drug test report filed by the Connecticut Toxicology Laboratory. These results tend to be more accurate than police field tests. Laboratory drug tests are usually only conducted when large amounts of drugs are confiscated or the police field test is inconclusive. Laboratory testing data were not available for all sample cases.

**Drug type.** Illegal drugs most frequently confiscated in the random sample of cases were "crack" cocaine (41 percent), marijuana (26 percent), and heroin (16 percent). To a lesser extent (17 percent combined total), cocaine, prescription medications such as Oxycontin, Xanax, and Percocet, hallucinogenic substances such as "mushrooms," and other illegal substances were confiscated.

Persons arrested for drug sale crimes were often charged with possessing more than one type of drug and the paraphernalia used to manufacture, package, and/or use drugs.

**Drug weight.** As stated, drug weight data were not available in all cases. However, drug weight thresholds are primarily an issue in mandatory minimum penalty cases involving cocaine and "crack" cocaine. The following analysis focuses on these two drugs.

During the time period covered by the cases in the program review sample, the state sentencing law set the mandatory minimum penalty for the sale of at least 1 ounce of cocaine or at least 0.5 grams of "crack," which is cocaine in a free-base form, was at least 5 years up to a maximum of life (60 years). Effective August 1, 2005, Public Act 05-248 equalized the weight threshold amounts for cocaine and "crack" at 0.5 ounce or more.

Table I-1 shows the percentage of drug arrest cases in the sample involving confiscated cocaine or "crack" by weight threshold groups. The groups are: (1) less than 0.5 grams (0.01 ounces), (2) equal to 0.5 grams, (3) more than 0.5 grams, but less than 28.3 grams (1 ounce); (4) equal to 28.3 grams; and (5) more than 28.3 grams.

<b>Table I-1. Weight Ranges of Confiscated Cocaine and “Crack” Cocaine</b>					
<i><b>Drug Type</b></i>	<i><b>Less than 0.5 grams</b></i>	<i><b>Equal to 0.5 grams</b></i>	<i><b>More than 0.5 grams but less than 28.3 grams*</b></i>	<i><b>Equal to 28.3 grams</b></i>	<i><b>More than 28.3 grams</b></i>
Cocaine	0	0	86%	0	14%
“Crack”	20%	0	71%	0	9%
*Converts to 1 ounce. Source of data: Judicial Branch					

As shown, most confiscated cocaine (86 percent) weighed less than the statutory weight threshold of 1 ounce (28.3 grams). The average amount of cocaine confiscated in the drug sale arrest cases was about 3 grams (0.1 ounces). More than 1 ounce of cocaine was confiscated in only 14 percent of the cases involving that drug.

In comparison, most confiscated “crack” (80 percent) weighed more than statutory weight threshold of 0.5 grams: 71 percent weighed between 0.5 and 28.3 grams and 9 percent weighed more than 28.3 grams (1 ounce). In only 20 percent of the cases, the confiscated “crack” weighed less than 0.5 grams.

Since the drug sale cases under review occurred prior to the statutory change in weight thresholds, this means that in the majority of cases involving the sale of cocaine, the defendants were not subject to the most serious mandatory minimum penalty of at least five years [up to a maximum of 60 years] based on 1 ounce or more (C.G.S. §21a-278(a)). They were instead subject to a lesser mandatory minimum penalty of five years for the first offense or 10 years for subsequent drug sale offenses, which authorizes a mandatory minimum penalty for the sale of any narcotic substance, hallucinogenic substance other than marijuana, or amphetamine (C.G.S. §21a-278(b)).

However, in the majority of cases involving the sale of “crack,” most defendants were subject to the most serious mandatory minimum penalty of at least 5 years [up to a maximum of 60 years] (C.G.S. §21a-278(a)). Only 20 percent of the cases were chargeable under the lesser mandatory minimum penalty law per Public Act 05-248.

Based on the data analyzed above, the equalization of the drug weight thresholds adopted in Public Act 05-248 will result in an overall increase in the number of persons arrested for and charged with the drug sale offense subject to a mandatory minimum penalty. The number of persons arrested for and charged with the sale of cocaine that meets or exceeds the weight threshold will increase. There will be, however, little change to the numbers of persons arrested for and charged with the sale of “crack” that meets or exceeds the weight threshold.

The average amount of marijuana confiscated was 53.9 grams (1.9 ounces) and the average amount of confiscated heroin was 12.9 grams (0.4 ounces). For both of these drugs, there were several arrest cases in which large quantities of the drugs (e.g., 4.2 ounces, 8.4 ounces, 25.5 ounces) were confiscated. In most cases involving heroin, the quantities ranged between 1.9 grams (0.06 ounces) and 7 grams (0.2 ounces).

## Arrest Location and Time

All of the reviewed cases involved persons arrested for mandatory minimum penalty drug sale offenses. In almost all cases (95 percent), the persons were subject to penalty enhancements because the drug crime occurred in “drug-free” zones within 1,500 feet of a school, day care center, or housing project. The program review committee analysis pertaining to the location, time, and other circumstances surrounding drug crime arrests is presented below.

- There was no pattern to the date of the drug arrests. Drug arrests were not more likely to occur during the traditional school year (September through June) than other months (July through August).
- Most drug crime arrests (78 percent) occurred between 4:00 p.m. and 12:00 a.m. About 12 percent occurred during the traditional school hours of 7:00 a.m. to 4:00 p.m., and 10 percent occurred between 12:00 a.m. and 6:00 a.m.
- In the majority of the sample drug cases the illegal drug activity occurred in a housing project in which the arrestee lived or a private residence in a “drug-free” zone. This is consistent with drug crime research that shows persons arrested for drug crimes tend to offend in the vicinity of their residences.
- Persons arrested subsequent to a traffic stop or “buy and bust” investigations<sup>7</sup> reported residing in the area of the drug crime.
- In less than 10 percent of the cases, a person who did not report residing at an address in the area was arrested for a drug sale. Most lived within the judicial district area of the arrest (e.g., residing in Manchester, but arrested for selling drugs in Hartford) and only two persons resided in another state.
- The data show frequent proximity of drug selling to school zones, but no arrests occurred in a day care center zone.
- In only three cases were persons identified by the police as students arrested on school grounds. In one case, a police officer observed a group of students sitting outside the school smoking marijuana. In two cases, school officials called police to the school in response to information that students were selling drugs on school property.
- Except for those three cases in which students were arrested, all arrests occurring in “drug-free” school zones were not linked in any way by the police to the school, a school activity, or students. The arrests simply occurred within “drug-free” school zones.
- None of the drug sale arrests directly involved a victim who reported the crime to the police, and no victims were reported by police as part of drug sale cases.
- In only one case was the arrest directly initiated in response to a citizen complaint. In a few cases the drug arrests were the result of increased police

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<sup>7</sup> A “buy and bust” investigation typically involves an undercover police officer buying drugs from a suspected drug dealer. The drugs purchased by the officer and the marked money paid to the dealer are used as probable cause for the subsequent arrest of the person selling drugs.



patrol in specific areas in response to general citizen complaints about illegal drug activity.

- All arrests reviewed were attributed to routine police patrol or drug investigations. The most common reasons for the drug arrests were: observation of the illegal activity by officers during routine police patrol and motor vehicle operation stops; “buy and bust” investigations; and the service of arrest and/or search warrants ordered as part of investigations conducted by municipal and state narcotic task forces.
- About 40 percent of the drug arrests were made after police observed a person(s) selling drugs from a car. The police then followed and eventually stopped the car either based on their observation of illegal drug activity and/or a motor vehicle violations (e.g., speeding, reckless driving, or running a red light).
- Often times, persons other than the target of the investigation or warrant were arrested as a result of evidence of their participation in the illegal drug activity. During traffic stops, the arrest reports indicated persons other than the driver were often arrested once the police discovered they possessed illegal drugs or weapons.

### **“Drug-Free” Zone Mapping**

As discussed in the staff briefing report, at the height of the national “crack epidemic,” in the mid-1980s, Connecticut like many other states established mandatory minimum penalties for drug sale in proximity to areas in which children live, play, and are educated. These “drug-free” zones are statutorily defined as the area within 1,500 feet of a school, day care center, and public housing.

The state drug laws provide a three-year mandatory minimum sentence for the sale of drugs by a non-drug-dependent person within a drug-free zone (C.G.S. §21a-278a(b)) and a two-year mandatory minimum sentence for possession of drugs by a non-student within a drug-free zone (C.G.S. §21a-279(d)). The mandatory minimum penalties function like sentence enhancements in that these three or two year sentences are in addition to the mandatory minimum penalty imposed for the underlying felony drug sale crime.

**Mapping.** The program review committee examined how the “drug-free,” enhanced penalty zone provisions work in practice. The basic steps of the analysis were to:

- select a representative sample of municipalities;
- map out the “drug-free” zones within each municipality using the statutory definition of within 1,500 feet of all identified schools, day care centers, and public housing; and
- map drug sale and possession offense locations based on arrests made by the Division of State Police within each municipality during a one-year period (July 1, 2004 through July 31, 2005).

The program review committee selected 12 municipalities to represent four categories of cities and towns in Connecticut.<sup>8</sup> The categories used and municipalities selected were:

- **urban:** Bridgeport, Hartford, and New Haven;
- **suburban with urban-like qualities:** Danbury, Manchester, New Britain, and Norwich;
- **suburban:** Glastonbury, Madison, and Westport; and
- **rural:** Canaan and Durham.

The mandatory minimum sentencing laws are silent as to how the 1,500 feet distance is measured to define a “drug-free” zone. There are two options: (1) measure from the center point of the property; and (2) measure from the perimeter property lines. Obviously, the second option would result in a larger “drug-free” zone in that it would include the total property of a school, day care center, or public house project and the 1,500 feet distance from the boundaries. This distance measurement option significantly impacts the “drug-free” zones around public housing projects in urban areas, which tend to be geographically large, often times covering several blocks in all directions.

It is not clear which method municipal police departments and state prosecutors use to measure “drug-free” zones. “Drug-free” zone areas tend not to be marked or identified by signs or other identifiers.

For the purposes of this mapping analysis, the “drug-free” zones were measured as 1,500 feet from a center point of the school, day care, or public housing project property.<sup>9</sup> Clearly, this minimizes the amount of area within the “drug-free” zones.

The schools, day care centers, and public housing in the selected municipalities were then mapped to identify the “drug-free” zones.<sup>10</sup> The “drug-free” zones are indicated on the maps of the 12 selected municipalities by shaded circles. The maps for each municipality are presented in Appendix B.

**Drug arrest data.** Most (87 percent) of drug crime arrests are made by municipal police. The Division of State Police Statewide Narcotics Task Force coordinates many drug investigations statewide especially in larger municipalities. Drug crime arrest data, however, were not readily available from local police departments

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<sup>8</sup> The category definitions developed by the Office of Legislative Research for the state’s redistricting plan were used for this analysis. Population ranges were used to define the categories.

<sup>9</sup> Staff did not have the data necessary to map a buffer around the school, day care center, and public house property parcels.

<sup>10</sup> The state Department of Education provided the addresses for schools, the Department of Public Health provided day care center addresses, and the Department of Economic and Community Development (DECD) provided public housing addresses. The DECD provided incomplete address data for certain public housing projects in Bridgeport, Hartford, New Britain, and New Haven. Those housing projects are not included in the maps.

The arrest data used for this analysis was provided by the Department of Public Safety's Division of State Police. These data include the geographical location of drug sale and possession incidents occurring in the selected 12 municipalities between July 1, 2004 and July 31, 2005.<sup>11</sup> The drug sale and possession incidents are shown by the points on the maps and represent all drug sale and possession arrests made by the state police. For the past several years, on an annual basis, the Division of State Police has made about 13 percent of all drug arrests statewide. While the sample does not include all drug arrests made in the selected municipalities, it does provide a representative sample.

**Conclusions.** The program review committee drew several conclusions from its review of the maps. The conclusions are supported by and consistent with available research on drug crime and sentencing laws. The committee conclusions are presented below.

- Particularly in larger municipalities, “drug-free” zones tend to overlap. In many municipalities, the total “drug-free” zone area is irregularly shaped.
- Drug sellers and users and others (e.g., students, parents, municipal officials) are unlikely to be able to identify whether they are actually in a “drug-free” zone.
- Larger municipalities, particularly urban areas, have many more schools often in less space than suburban and rural towns.
- Rural municipalities tend not to have public housing and the “drug-free” zone areas account for a low percentage of total area. The “drug-free” zones cluster around schools.
- Despite minimizing the area of the “drug-free” zones due to data limitations, a significant percentage of the total geographical areas of urban and “urban-like” suburban municipalities are “drug-free” zones. Almost the total geographical areas of Bridgeport, Hartford, and New Haven are within “drug-free” zones.
- “Drug-free” zones in suburban municipalities tend to cluster in or near the downtown areas.
- “Drug-free” zones tend to be located along major highways and roads and many of the drug crime arrests made by state police occurred on a state highway.
- Almost all drug crime arrests made by the state police in urban and “urban-like” suburban municipalities were within “drug-free” zones and subject to mandatory minimum penalty enhancements.
- Almost all drug crime arrests made by the state police in suburban and rural municipalities were outside “drug-free” zones.

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<sup>11</sup> The Division of State Police provided the latitude and longitude coordinates, derived from an InterGraph Map program, for each arrest location.

### **What is the impact of mandatory minimum sentences on prison resources?**

*Mandatory minimum sentencing laws do not per se have an impact on prison resources. While, overall 37 percent of the sentenced inmate population is serving a mandatory minimum penalty term, given the seriousness of the offenses currently subject to mandatory minimum penalties, absent these laws, most if not all of these offenders would have been incarcerated anyway and many are serving more time in prison than the mandatory minimum sentences.*

Offenders convicted of serious and violent offenses subject to mandatory minimum penalties often receive sentences greater than the mandatory minimum sentence. For other offenses carrying mandatory minimum penalties, many inmates serve prison terms less than or equal to the mandatory minimum penalty. In either case, the mandatory minimum term has no direct impact on the use of prison resources.

Additionally, many inmates are serving multiple sentences. Not all of the sentences include mandatory minimum penalty terms.

Almost all inmates, except those convicted of murder and aggravated sexual assault in the first degree, are eligible for parole or other DOC early release programs. Many inmates serving mandatory minimum sentences are paroled or released early by DOC. They tend to serve most of their sentences prior to release. This is the function of the parole eligibility and early release laws and parole board and DOC release policies rather than a requirement of mandatory minimum sentencing laws.

A detailed analysis of the impact of the state's mandatory minimum sentencing laws on the demand for prison beds is presented below. This section contains the analyses of the number (and percentage) of the inmate population serving a mandatory minimum sentence and the actual time served of the mandatory minimum sentences prior to inmates being discharged from prison either on an early release program or after the completion of the sentence.

### **Inmate Sample**

To examine the number of inmates serving prison terms that include mandatory minimum penalties and the actual amount of time served in prison on those sentences, program review committee obtained Department of Correction data on the inmates serving prison sentences that included at least one offense subject to a mandatory minimum penalty. Due to limitations with the department's automated inmate information system, inmates in prison on July 1, 2001 were selected.

For this representative sample of inmates, DOC provided data on:

- inmate age, gender, and race;
- mandatory minimum offenses for which they were convicted;

- court-imposed sentences;
- actual time served on their sentences; and
- if released early from prison, the type of community supervision program.

When interpreting sentencing and DOC inmate data, it is important to note a person may be arrested more than once and charged with more than one crime per arrest. Subsequently, an inmate may be convicted of multiple offenses involving several cases and sentenced to multiple prison terms. For DOC inmate management purposes, the sentences are combined for an aggregate term (called the “effective” sentence).

The following analysis identified the specific mandatory minimum sentences for each inmate in the sample and does not include data on other non-mandatory minimum sentences imposed for the same or other cases the inmates may have been serving. If the inmates were serving multiple sentences, therefore, they may have actually served longer prison terms than the mandatory minimum sentence being analyzed.

### Inmate Population Profile

On July 1, 2001, there were 5,269 inmates in prison serving a mandatory minimum sentence. This represents 37 percent of the total sentenced inmate populations (or 30 percent of the total accused and sentenced inmate population).

**Demographics.** The vast majority of the inmates serving mandatory minimum sentences (95 percent) were male; only about 5 percent were female. The inmates ranged in age from 15 to 82. The average age of a sentenced inmate serving a mandatory minimum prison term was 32.

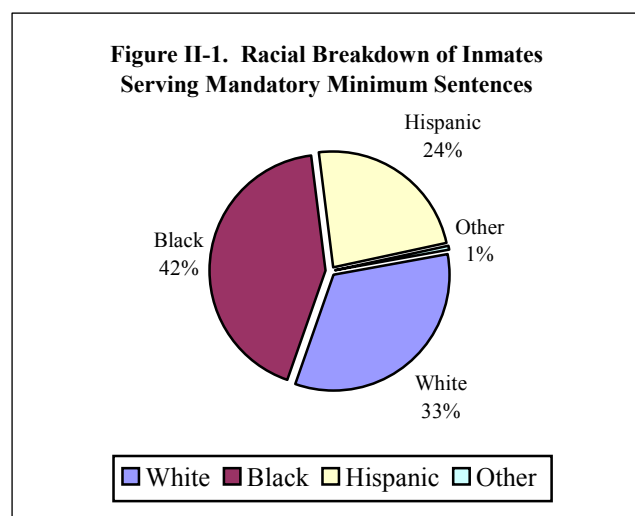


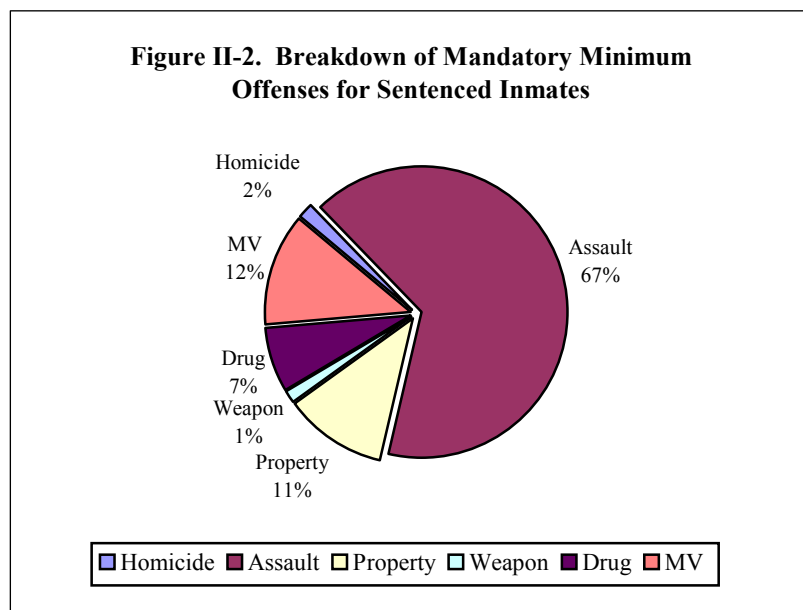
Figure II-1 shows the racial and ethnic breakdown of the sentenced inmates serving mandatory minimum sentences. Two-thirds (66 percent) of the inmates were African American or Hispanic, 24 percent were Caucasian, and about 1 percent were identified as another racial or ethnic group (e.g., American Indian, Asian).

The demographic breakdown of the inmates serving mandatory minimum sentences is consistent with prior analyses of the DOC inmate population conducted by the program review committee.<sup>12</sup>

<sup>12</sup> Refer to the Legislative Program Review and Investigations Committee reports on *Factors Impacting Prison Overcrowding* (2000) and *Recidivism in Connecticut* (2001).

## Mandatory Minimum Offenses

The offense categories used in Section 1 were also used to analyze the DOC inmate offense data. The offenses for which the inmates were convicted and sentenced to prison were categorized as: homicide; assault; property; weapon; drug; and motor vehicle offenses.<sup>13</sup> Figure II-2 illustrates the breakdown by offense category.



As shown in the graphic, about two-thirds of the inmates were serving mandatory minimum sentences for assault offenses. Almost half (46 percent) of those were convicted of assault in the third degree and assault in the third degree with a deadly weapon. About 20 percent were in prison serving a mandatory minimum sentence for sexual assault, most were convicted of forcible sexual assault in the first degree of a victim under 16 and sexual assault in the second degree.

Twelve percent of the inmates were serving a mandatory minimum sentence for the motor vehicle offenses of driving under the influence of alcohol or drugs (DUI) and driving under a suspended driver's license that was suspended for a prior DUI. Only 7 percent of the inmates were serving mandatory minimum sentence for drug sale offenses.

## Mandatory Minimum Sentences

Table II-1 shows the average sentence imposed on convicted inmates, broken down by the mandatory minimum offense categories. Also shown are the minimum and maximum terms imposed for each category.

As stated in Appendix A, the mandatory minimum penalties for the specific offenses differ, but are within a close range within each offense category. In some cases, the sentence data for specific offenses is discussed separately below.

For example, a first conviction for DUI is subject to a two-day presumptive penalty. A judge may require a person perform community service in lieu of two days in prison. About 20

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<sup>13</sup> None of the inmates in the sample were serving a mandatory minimum sentence for offenses in the "other" category, which was defined in Section 1. Therefore, that category is not included in this analysis.

percent of the inmates convicted of motor vehicle offenses were sentenced to the two-day mandatory minimum. A second conviction carries a 120-day mandatory minimum penalty, and a third or subsequent conviction is subject to a mandatory minimum penalty of a year in prison. More than a third (35 percent) of the inmates convicted of motor vehicle offenses were sentenced to 120 days, but less than a year. Ten percent were incarcerated for a year or more.

<b>Table II-1. Prison Sentence Imposed for Mandatory Minimum Penalty Offenses: July 1, 2001</b>			
<i><b>Offense Category</b></i>	<i><b>Minimum Term</b></i>	<i><b>Maximum Term</b></i>	<i><b>Average Term Imposed</b></i>
Homicide*	2.5 years	122 years	73 years
Assault	5 days	51 years	4.6 years
Property	61 days	29 years	3.6 years
Drug	30 days	20 years	7.4 years
Weapon	1.4 years	5 years	2.8 years
MV	2 days	6 years	11 months
*The inmates in the sample sentenced to multiple life sentences or the death penalty were excluded from this analysis. Source of data: Department of Correction			

To more closely examine whether the inmates were sentenced to the statutory mandatory minimum or more than the mandatory minimum penalties, the sentence data for the specific offenses was further analyzed. Table II-2, on page 24, shows each of the offenses subject to a mandatory minimum for which inmates were sentenced to prison. Some offenses are not included because no inmates were incarcerated for those crimes on July 1, 2001. Also, the mandatory minimum penalties that function like sentencing enhancements were not included because the data do not differentiate the underlying sentence from the sentencing enhancement.

Table II-3 shows each of the offenses subject to presumptive sentencing for which inmates were sentenced to prison. Again, some offenses are not included because no inmates were incarcerated for those crimes on July 1, 2001, and the presumptive sentencing penalties that function like sentencing enhancements were also not included.

<b>Table II-3. Sentence Terms for Inmates Sentenced to Presumptive Penalties</b>					
	<i><b># Sentenced Inmates</b></i>	<i><b>Mandatory Minimum</b></i>	<i><b>% Sentenced to Less Than MM</b></i>	<i><b>% Sentenced to MM</b></i>	<i><b>% Sentenced to More Than MM</b></i>
<b>Drug Sale</b>					
21a-278(a)	33	5 years (to life)	42%	24%	33*
21a-278(b)	27	5 years : 1 <sup>st</sup> offense  10 years: 2 <sup>nd</sup> offense	7%	4%  15%	45% to between 5-10 years 29% to more than 10 years
<b>Motor Vehicle</b>					
14-215(c)	19	30 days	5%	5%	90%
14-227a(g): 1 <sup>st</sup> conviction	351	2 days	0	23%	77%
*Maximum sentence imposed was 20 years. Source of data: Department of Correction					

<b>Table II-2. Sentence Terms for Inmates Sentenced to Mandatory Minimum Penalties</b>					
	<i># Sentenced Inmates</i>	<i>Mandatory Minimum</i>	<i>% Sentenced to Less Than MM</i>	<i>% Sentenced to MM</i>	<i>% Sentenced to More Than MM</i>
<b>Homicide</b>					
53a-54a	38	25 years	0	0	100%
53a-54c	10	25 years	0	0	100%
53a-55a	16	5 years	0	0	100%
55a-56a	4	1 year	0	0	100%
<b>Assault</b>					
53a-59	257	5 years if weapon used 10 years if minor victim	31%	19% (5 years) 28% (5-10 years) 8% (10 years)	14%
53a-59a	8	5 years	25%	25%	50%
53a-60a	9	1 year	0	11%	89%
53a-60b	14	2 years	0	29%	71%
53a-61	1,121	1 year	42%	46%	12%
53a-61a	27	1 year	0	85%	15%
53a-70	280	2 years  10 years if minor victim	2%	1% (2 yrs) 68% (2-10 yrs) 6% (10 yrs)	23%
53a-70a	7	5 years	0	0	100%
53a-71	247	9 months	0	0	100%
53a-92	17	1 year	0	0	100%
53a-92a	5	1 year	0	0	100%
53a-94	12	1 year	0	0	100%
53a-94a	2	1 year	0	0	100%
53a-134	484	5 years	27%	20%	53%
53a-196a	1	10 years	100%	0	0
<b>Property</b>					
53a-101	56	5 years	41%	7%	52%
53a-102a	1	1 year	0	0	100%
53a-103a	1	1 year	0	100%	0
53a-123	374	2 years	33%	17%	50%
<b>Weapon</b>					
29-34	1	1 year	0	0	100%
53a-216	1	5 years	0	100%	0
<b>Motor Vehicle</b>					
14-227a(g): 2 <sup>nd</sup> conviction	10	120 days	0	0	100%
14-227a(g): 3+ convictions	3	1 year	0	0	100%
NOTE: Sentences less than the mandatory minimum penalty are most likely due to data errors in calculating multiple sentences and applying "good time" credits. Most sentences less than the mandatory minimum penalty were close to those terms. Source of data: Department of Correction					



For crimes subject to presumptive sentencing penalties, judges are authorized to depart from the mandatory minimum penalty for “good cause” or other statutorily defined mitigating circumstances and impose a lesser penalty. In most cases, the mandatory minimum penalty term or a greater penalty was imposed. Notably, judges did frequently depart (42 percent) from the mandatory minimum term for a conviction for the sale of certain drugs by a non-drug-dependent person (C.G.S. §21a-278(a)). It should be noted this law was recently changed by Public Act 05-83, which equalized the weight threshold for cocaine and “crack” at one-half ounce. As stated, prior to the change, the statutory weight threshold for cocaine was one ounce and “crack” one-half gram. The underlying basis for the change was that the different weight thresholds for two drugs that are chemically the same was unfair and had resulted in disparate sentences especially for minority offenders. It could be concluded judges were responding to the issue by using their presumptive sentencing authority even before the legislature amended the law.

## Time Served

A purpose of the state’s mandatory minimum sentencing laws was to set specific minimum terms of incarceration for certain crimes. Under these laws, upon conviction, a judge is required to impose at least the mandatory minimum penalty, but can impose a greater term. The underlying concept is that the offender serves at least the mandatory minimum penalty term prior to any early release from prison.

However, other state sentencing laws authorizing early release options such as parole and transitional supervision do not exclude most offenders sentenced to mandatory minimum penalties. Inmates serving mandatory minimum sentences are also not excluded from other DOC early release program including halfway houses and re-entry furloughs. (Appendix C summarizes parole, transitional supervision, and the two other DOC early release programs.) As a result, offenders serving mandatory minimum penalties can serve less than the required sentence.

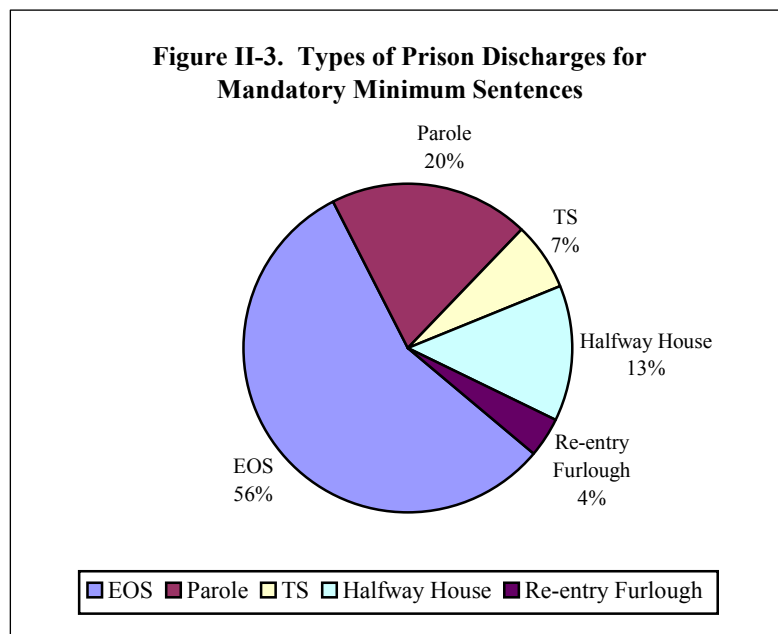
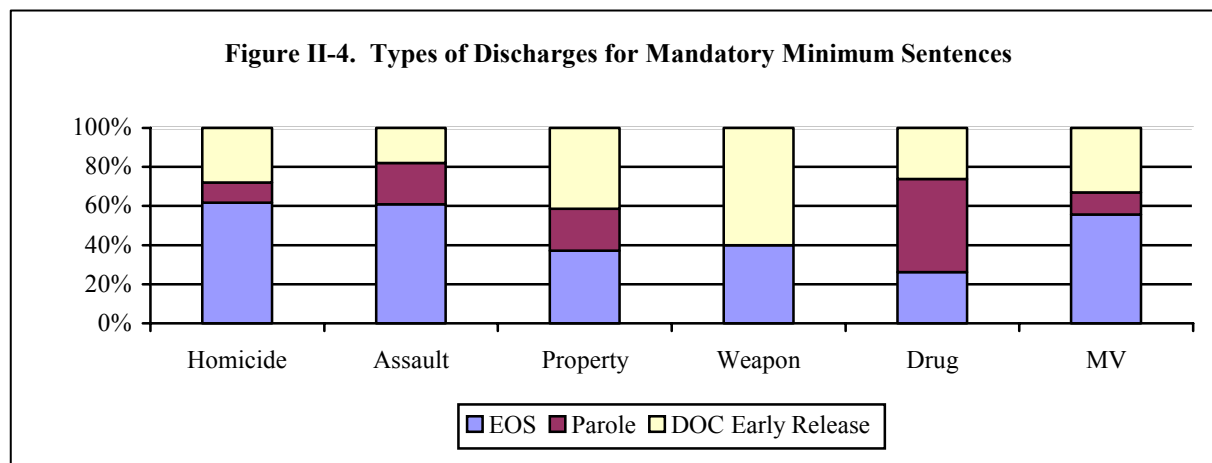


Figure II-3 shows that more than half (56 percent) of the inmates served all of their mandatory minimum sentence in prison with no early release, which is referred to as the end of sentence (EOS) date in the figure. Twenty percent were released from prison on parole, and 24 percent were released into one of three DOC early release programs: transitional supervision (TS), halfway house, or re-entry furlough.

Figure II-4 shows the types of discharges from prison by

offense categories. Most inmates sentenced to mandatory minimum penalties for a homicide, assault, or motor vehicle offense (at least 60 percent in each group) were discharged after serving 100 percent of the court-imposed sentence. They were not granted parole or early release under a DOC program.



Inmates who were convicted of property, weapon, and drug crimes and sentenced to mandatory minimum penalties were more often released early from prison. Drug offenders were more often paroled, and weapon offenders were released on transition supervision or transferred to a halfway house.

<b>Table II-4. Average Time Served on Mandatory Minimum Sentences</b>	
<i>Offense Category</i>	<i>Average Time Served</i>
Homicide	52%
Assault	91%
Property	81%
Drug	83%
Weapon	50%
MV	95%
Source of data: Department of Correction	

The average time served of mandatory minimum sentences prior to early release is shown in Table II-4. Persons convicted of murder are not eligible for parole. The homicide category, therefore, only includes persons convicted of manslaughter. As shown in the table, on average, inmates convicted of manslaughter served 52 percent of the total court-imposed sentence prior to early release. Since 1995, persons convicted of “serious, violent” offenses were required to serve 85 percent of their sentences prior to being paroled. It can be concluded most of these inmates were convicted and incarcerated prior to the effective date of the statutory time-served standard and were, therefore, eligible for parole after serving at least 50 percent of their sentences.

On average, inmates serving mandatory minimum sentences for assault, property, drug, and motor vehicle offenses served most of the court-imposed sentence prior to being paroled or released by DOC. Only persons convicted of weapon offenses were released early from prison are at first eligibility (50 percent of the court-imposed sentence).

### **What are the costs associated with mandatory minimum sentencing?**

The daily incarceration and community supervision costs for an inmate serving a mandatory minimum sentence are the same as that for any other inmate serving a non-mandatory minimum sentence. As discussed in Section 2, mandatory minimum sentencing laws are not driving the overall use of prison resources. *These laws, therefore, are not driving the costs of prison resources.*<sup>14</sup>

*The criminal justice costs associated with the arrest, prosecution, and case disposition phases of mandatory minimum penalty cases would be incurred by the state regardless of these sentencing laws.*

The final area of analysis of the costs associated with mandatory minimum sentences is provided below. The following is an analysis of the direct costs associated with the penalty phase of the state's mandatory minimum sentencing laws. The cost of incarceration and community supervision (e.g., parole and probation) for persons convicted of mandatory minimum penalty offenses that can be directly attributed to the imposition of mandatory minimum penalties. The costs, if any, of any proposed sentencing changes will be discussed in Section 4.

#### **Case Disposition Costs**

In addition to penalty costs, there are other state costs associated with the arrest and disposition phases of criminal cases. State criminal justice agencies typically do not calculate these costs. There is no reliable estimate of the cost to arrest an offender, which may include routine patrol, an investigation, or obtaining and serving warrants. The Division of Criminal Justice cannot provide an average cost to prosecute a case nor can the Judicial Branch provide the average cost of case disposition. These costs, therefore, could not be factored into the following analysis. However, these costs occur regardless of whether a crime carries a mandatory penalty. Given that the offenses currently subject to mandatory minimum penalties would be crimes regardless of these sentencing laws, the prosecution and disposition costs are not then specific to the mandatory minimum sentencing laws.

While there is currently no estimate of costs to dispose of a trial, it can be concluded a negotiated disposition (plea bargain) is less costly than a trial. Given that mandatory minimum sentences are an effective prosecutorial tool to negotiate pleas and sentences, they may be a factor in controlling state costs associated with the disposition of criminal cases.

There is also the direct cost of crime to victims and the broader social costs of crime. The victim's cost includes the value of lost or destroyed property, medical bills, missed work,

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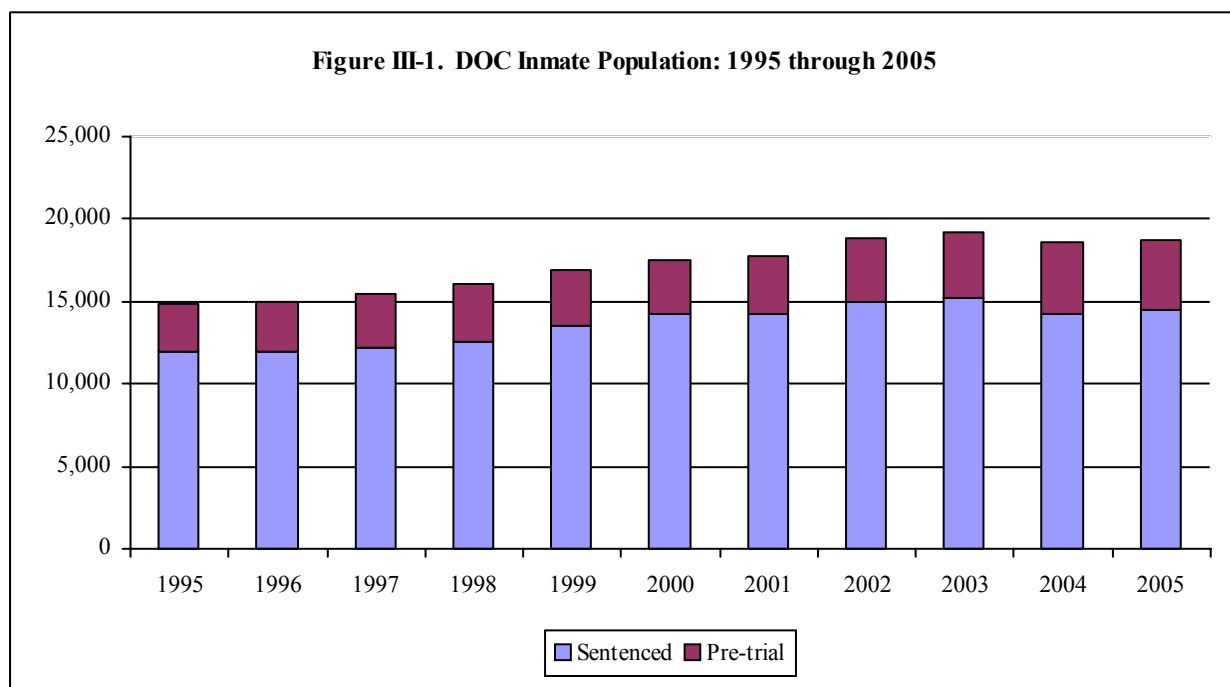
<sup>14</sup> The Department of Correction is currently managing a \$28.5 million deficit, which represents more than 5 percent of its FY 05 total appropriation of \$548.5 million. The deficiency is occurring in three areas: (1) personal services (e.g., staff overtime costs); (2) other expenses (e.g., community supervision operations and Worker's Compensation); and (3) inmate medical services.

and pain and suffering. The social costs of crime that are not directly attributed to the state criminal justice system are increased insurance premiums, destroyed property, decrease in property values, and an impact on the public's overall sense of safety. Research shows that it is difficult to put a dollar value on some of the factors attributed to the total cost of crime to victims and society. These costs are also not specific to the mandatory minimum sentencing laws and would occur absent these laws. An analysis of the costs to victims or the broader social costs of crime is, therefore, not included in this report.

### Penalty Phase Cost Analysis

**Inmate population.** A common criticism of a mandatory minimum sentencing policy is that it is a significant factor contributing to prison overcrowding and the corresponding increases in state prison budgets. There is no doubt Connecticut, like most other states, has experienced dramatic increases in the incarcerated offender population over the past 25 years. In fact, despite a prison expansion project that added about 10,000 prison beds, Connecticut's prison system has operated at or over capacity for much of the past 20 years.

Figure III-1 tracks the growth in the Connecticut pre-trial and sentenced inmate population. The sentenced inmate population appears to have slightly decreased (by 5 percent from 2003) over the past two years. To date, the decrease has been attributed to a shift in criminal justice policy for increased support of alternative to incarceration and community release options for offenders and not any significant change in sentencing policy or trends.



The sentenced incarcerated population has averaged 14,578 inmates per year since 2000. As discussed in Section 2, there are approximately 5,300 inmates on any given day serving a sentence that includes a mandatory minimum penalty, which represents 37 percent of the total

sentenced population. Pre-trial inmates are not included because they have not yet been convicted or sentenced.

**Incarceration costs.** The daily state cost to incarcerate inmates serving mandatory minimum sentences is the same as that for all other inmates. It is the length of the sentence and the facility to which the inmate is transferred<sup>15</sup> that impact the total incarceration cost per inmate. The average daily cost of incarceration is \$104 per day.<sup>16</sup>

On any given day, 5,300 inmates are in prison serving sentences that include a mandatory minimum penalty term. Using the department-wide average daily cost of incarceration, it costs \$551,200 per day to incarcerate inmates serving mandatory minimum sentences. Prior to November 2005, the average daily incarceration cost was \$508,800.

The annual cost of incarceration associated with mandatory minimum sentences is \$201.1 million. Prior to November 2005, it was \$185.7 million. DOC annual budget is \$548.5 million and the costs associated mandatory minimum sentences represents 37 percent of the total budget.

Table III-1 shows the potential incarceration costs for the statutory mandatory minimum penalties for certain offenses. The average daily cost of incarceration used in this analysis is \$96 because DOC increased to \$104 the average cost per day effective November 1, 2005, and the sentences under review were imposed well before this date. The potential costs are calculated based on the offender serving 100 percent of the mandatory minimum penalty authorized by statute.

As shown, it costs \$876,000 to incarcerate a person convicted of murder and sentenced to the mandatory minimum penalty of 25 years. However, judges generally impose sentences greater than the mandatory minimum for murder. The sentencing analysis showed most convicted murderers are sentenced to about 40 years, which increases the potential incarceration costs to \$1.4 million per offender.

The potential costs to incarcerate a person convicted of selling more than 0.5 grams of “crack,” prior to July 2005, ranged from \$175,200 for a five-year mandatory minimum penalty or up to \$2.1 million for the maximum penalty of 60 years (life).

The potential incarceration costs associated with DUI mandatory minimum sentences are:

- \$192 for a two day sentence for a first conviction;
- \$11,520 for a 120 day sentence for a second conviction; and
- \$35,040 for a one year sentence for a third and subsequent convictions.

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<sup>15</sup> The Department of Correction operates 20 prisons and jails throughout the state. The facilities are rated by security levels (minimum to maximum), have different staffing needs, and offer various programs and services. The average daily incarceration costs for each prison varies depending on these factors.

<sup>16</sup> Effective June 14, 2004, for the purposes of implementing Public Act 04-234, the Department of Correction set the average daily cost of incarceration at \$96. Effective November 1, 2005, the average daily cost of incarceration was increased to \$104.

**Community supervision costs.** As discussed in Section 2, most inmates sentenced to mandatory minimum penalties do not served 100 percent of the sentence due to parole and other early release options. Since most inmates convicted of mandatory minimum offenses serve more than 80 percent of their sentences prior to any early release program, the estimated costs are close to that of the potential costs. Table III-1, on page 31, also shows the estimated incarceration costs based on the average time served in prison for certain offenses subject to a mandatory minimum penalty.

Many inmates are paroled and/or are sentenced to a period of post-incarceration probation supervision. The costs for parole and probation supervision are much less than incarceration costs. In 2000, the Board of Parole calculated the average daily cost of parole supervision at \$11 per day per parolee or about \$4,000 per year. The Department of Correction was unable to update the cost estimate.<sup>17</sup>

<b>Table III-2. Estimated Parole Costs</b>	
<i>Parole Period</i>	<i>Estimated Costs (\$11 per day)</i>
6 months	\$1,980
1 year	\$4,015
2 years	\$8,030
5 years	\$20,075
Source of data: Board of Pardons & Paroles	

Table III-2 shows the estimated costs of parole for various periods. Since inmates can be parole at any point in their sentences, the length of the parole periods vary.

The Court Support Services Division provided a current estimate of the cost of probation. It estimates it costs about \$2 per day per probationer or about \$831 per year.<sup>18</sup> (The 2005 cost estimate is the same as that provided in 2000.)

<b>Table III-3. Estimated Probation Costs</b>	
<i>Parole Period</i>	<i>Estimated Costs (\$2 per day)</i>
1 years	\$730
3 year	\$2,190
5 years	\$3,650
10 years	\$7,300
25 years	\$18,250
Source of data: Board of Pardons & Paroles	

As stated in Section 1, most offenders in the sample were sentenced to a period of probation in addition to the prison terms. The probationary periods ranged from one year to 25 years. The most frequently imposed probationary terms were 3 years and 5 years. Table III-3 shows the estimated costs of probation for various periods.

<sup>17</sup>In 2003, as a result of the merger of the Board of Parole into the Department of Correction and the subsequent passage of Public Act 04-234 that clarified the department's parole responsibilities, parole supervision responsibilities were transferred from the parole board to the department. The department assumed operational control in October 2004.

<sup>18</sup> The average daily cost for probation supervision is calculated based on the costs for: probation officer and supervisory and administrative staff salaries; building expenses; community-based programs; staff training and development; and other administrative services and contracts. Fringe benefits, indirect CCSD expenditures (e.g., information management and technology services), and other statewide allocations by DAS and OPM were not included.

<b>Table III-1. Costs of Incarceration for Selected Mandatory Minimum Penalty Offenses</b>				
<i>Offense</i>	<i>Mandatory Minimum Penalty</i>	<i>Potential Incarceration Costs (\$96 per day)</i>	<i>Average Time Served on Sentence</i>	<i>Estimated Incarceration Costs (\$96 per day)</i>
Murder	25 years	\$876,000	40 years	\$1,401,600
Manslaughter	5 years	\$175,200	3 years	\$105,120
Forcible sexual assault	10 years	\$350,400	38.5 years	\$1,349,040
Aggravated sexual assault	20 years	\$700,800	14 years	\$490,560
Sexual Assault second degree of victim under 16	9 months	\$25,920	8.5 months	\$24,480
Assault second degree with firearm of special status victim	3 years	\$105,120	2.8 years	\$98,112
Kidnapping second degree	1 year	\$35,040	8 months	\$23,040
Burglary first degree with weapon	5 years	\$175,200	4 years	\$140,160
Larceny second degree of special status victim	2 years	\$70,080	1.6 years	\$56,064
DUI 1 <sup>st</sup> offense	1 <sup>st</sup> offense: 2 days 2 <sup>nd</sup> offense: 120 days 3 <sup>rd</sup> offense: 1 years	\$192 \$11,520 \$35,040	2 days 90 days 8 months	\$192 \$8,640 \$23,040
Driving under license suspension	30 days	\$2,880	27 days	\$2,592
Sale of certain drugs by non-drug-dependent person (21a-278(a))	5 years to Max of 60 years (life)	\$175,200 to \$2,102,400	3 years 39 years	\$105,120 \$1,366,560
Sale of any drug by non-drug-dependent person (21-278(b))	1 <sup>st</sup> offense: 5 years 2 <sup>nd</sup> offense: 10 years	\$175,200 \$350,400	3 years 6.5 years	\$105,120 \$227,760
Source of data: Judicial Branch and Department of Correction				

### Findings and Recommendations

The program review committee findings and recommendations relating to mandatory minimum sentencing laws are presented below.

#### Legislative Purpose of Mandatory Minimum Sentencing

The overarching crime policy of the state is to protect the public by preventing, or at least reducing, crime. One main process to accomplish this goal is to punish persons convicted of crimes. The traditional goals of sentencing are: punishment, deterrence, incapacitation, and rehabilitation. Convicted offenders are punished through different sentencing options defined by state laws, imposed by judges, and administered by state criminal justice agencies.

*Mandatory minimum sentencing laws are only one component of the existing criminal sentencing framework.* Given the comprehensive list of criminal offenses in the penal code, only a small number of serious and/or violent offenses (e.g., murder, assault, sexual assault, firearm and weapon violations, drug sale, and driving under the influence of alcohol or drugs) are subject to mandatory minimum penalties.

The state's crime policy and sentencing goals have not changed. What has changed, however, are the sentencing policies intended to achieve those goals. While crime and its punishment have always been a public policy concern, since the 1980s, the legislature has assumed an increased role in dictating the specific terms of sentencing. As discussed in the staff briefing report (September 22, 2005), for a variety of reasons, Connecticut, like most states, initiated what has become almost a 30-year "experiment" in sentencing policy reform. Without changing the overall state crime policy or sentencing goals, various sentencing reforms were enacted to achieve, at times, different outcomes.

Some reforms were intended to correct perceived flaws in the criminal process by: reducing disparity in sentences; increasing accountability, uniformity, and fairness in sentencing decisions made by judges [and early release decisions made by the parole board and the Department of Correction]; and increasing the proportionality of sentences. These sentencing reforms (e.g., determinate sentencing and "truth-in-sentencing") curtailed, and in some cases eliminated, the discretion of judges [and parole boards] in an attempt to achieve more consistent, uniform, and fair sentences. Sentencing decisions were more closely linked to the criminal charges, and the discretion formerly vested in judges [and the parole board] shifted to prosecutors. There is consensus in national sentencing research that, ironically, increasing prosecutors' control over sentencing outcomes undermined the uniformity in sentencing decisions the reforms were intended to achieve.



Other sentencing reforms were intended to increase the severity of punishment as well as predictability, such as mandatory minimum sentencing and persistent offender laws. At the same time, sentencing reforms that created a system of diversion from prosecution and alternative to incarceration sanctions for certain offenders were also established. The most recent sentencing reform enacted in Connecticut is the offender re-entry strategy, which is intended to improve community re-entry supervision and programs to achieve an overall reduction in recidivism among offenders thereby controlling prison overcrowding.

*Mandatory minimum sentencing laws were specifically intended to deter offenders and thereby reduce crime (and curb drug use).* There is no direct evidence to suggest that the state's mandatory minimum sentencing laws reduced the crime rate (or drug use). Criminal justice research and sentencing experts agree decline in arrests in Connecticut is the cumulative effect of many factors, not any one sentencing policy.

The political and public debate on crime has, for many years, stressed a "get tough" approach that focused on the sentencing goals of retribution and incapacitation rather than rehabilitation. Only recently has the crime debate shifted to also recognize most offenders are in or will be returning to the community and that the state's criminal justice policies and resources should be focused on recidivism among offenders through more effective community re-entry strategies.

No matter the intended focus of a sentencing reform, however, the political debate on crime directly impacts the criminal justice system's administration of the sentencing laws and the allocation of state criminal justice resources. For most of the past 25 years, the crime debate and administration of sentencing laws have driven the appropriation of limited state criminal justice resources. In general, as a result of the "get tough" message, there was increased demand for prison bed resources. As the system experienced dramatic growth in the inmate population, the Department of Correction budget also dramatically increased. In response, the parallel system developed to administer the alternatives to incarceration, diversion, and community supervision sentencing laws, which were often viewed as "soft on crime," was forced to compete for limited criminal justice resources and has generally been underfunded.

*Mandatory minimum sentencing policy is a compelling symbol of the "tough on crime" political message and "crime of the week" political pressures.* The laws were enacted in large part to send strong messages that violent crime and drug use, particularly when children are the victims of these crimes, will not be tolerated in Connecticut. This is a powerful argument, especially since no one can dispute public safety is enhanced by having criminal penalties.

The dilemma is that many elected officials who enact mandatory sentencing laws support them for symbolic reasons, while the public officials who administer mandatory sentencing laws often oppose them for procedural reasons. The severity of mandatory minimum sentencing laws is often cited as the reasons prosecutors and judges are reluctant to impose the penalties. Mandatory minimum sentencing laws are based on the severity of the offense and the offender's criminal history and specifically do not take into account individual offender characteristics and circumstances.

*Acknowledging the state's sentencing policy may have resulted in "unintended consequences" such as unduly harsh sentences for drug sale crimes and racial disparity in criminal sentencing and that the policy has not directly contributed to reducing the crime rate and drug use, the General Assembly significantly amended the mandatory minimum sentencing laws. First, in 1999, the state's statutory parole eligibility law was amended. Under current parole board statutes, a convicted offender sentenced to a mandatory minimum sentence is no longer required to serve that term to be eligible for parole release. Second, in 2001, judges were given discretion to depart from the mandatory minimum penalties for drug sale crimes for certain mitigating factors. This change enacted the presumptive sentencing reform.*

*In recent years, Connecticut has begun to shift its policy to more effective and less costly criminal justice strategies intended to reduce recidivism, maintain the prison population at or under bed capacity, and provide more diversionary and alternative sanction options to a greater percentage of the offender population.*

### **Administration of Mandatory Minimum Sentencing Laws**

Mandatory sentencing laws can only be as mandatory as police, prosecutors, and judges choose to make them. *In Connecticut, state's attorneys and judges (and defense attorneys) generally in effect circumvent the state's mandatory minimum sentencing laws and, in fact, relatively few offenders are actually convicted of offenses subject to mandatory minimum penalties. These entities generally find mandatory sentencing laws too inflexible and take steps to avoid what they consider unduly harsh and unjust sentences. However, mandatory minimum penalties are used effectively and efficiently as a prosecutorial tool to negotiate pleas and sentences.*

State's attorneys use mandatory minimum penalties to influence a defendant's decision to accept a plea bargain. If a defendant agrees to a plea bargain, a state's attorney usually "comes off" of a mandatory minimum sentence by substituting another charge and recommending a lesser sentence, which is then imposed by a judge. If a defendant rejects a plea bargain, however, a state's attorney will "stick" on the criminal charge carrying a mandatory minimum penalty, and it is then necessary for the defendant to either proceed to trial or continue to negotiate. In either case, the state's attorney's original offer to "come off" the mandatory minimum penalty is withdrawn, and the defendant is now subject to at least the mandatory minimum sentence or even a greater prison term. Typically, defendants try to avoid the unpredictability of a trial and elude the most severe allowable sentence by plea bargaining, which strengthens the prosecutor's power to deal.

*Geographical differences and the working relationship between a judge, state's attorney, and defense counsel are the most significant factors in how the mandatory minimum sentencing laws are applied. Based on interviews with judges, prosecutors, and defense attorneys and the program review staff observation of the pre-trial process, in some judicial districts in Connecticut, the mandatory sentencing laws are almost never used to charge a defendant, while in others the state's attorneys routinely charge under the laws, especially for certain types of crimes such as drug sale or sexual assault.*

There is consensus among the judges, state's attorneys, and defense attorneys interviewed that their individual working relationships impact the use of mandatory minimum sentencing laws. A good working relationship allows them to openly discuss the offense and the defendant and to negotiate what they view as an appropriate sentence. A difficult working relationship, however, often makes it difficult to negotiate cases subject to a mandatory minimum penalty especially if the state's attorney "sticks on" the charge and the judge disagrees with the decision and/or sentence. In that case, a judge, with no authority over the state's attorney's decision to charge, also has little influence during the plea bargaining process. This clash of authorities can further strain an already difficult working relationship.

*Judges interviewed believe, in theory, a mandatory minimum sentencing policy unjustly removes their discretion and improperly shifts that discretion to the prosecutor.* However, in practice, most judges stated they have sufficient authority and discretion to work with prosecutors to circumvent the mandatory minimum penalties when they believe the penalties are inappropriate and/or too harsh.

Judges believe presumptive sentencing, in theory, can be a workable compromise between mandatory minimum sentencing and discretionary determinate sentencing policies. Under a presumptive sentencing law, a judge has discretion to depart from a statutory mandatory minimum sentence for certain mitigating circumstance.

Connecticut shifted its sentencing policy for drug sale offenses from mandatory minimum to presumptive sentencing in 2001. However, for two reasons, judges interviewed stated it would be uncommon for them to use the presumptive authority to depart from the mandatory minimum penalty for a drug sale offense. First, because of plea bargaining, few defendants are convicted and sentenced to the mandatory minimum penalty. For those that are, judges do not typically depart from the mandatory minimum because it is found either through the plea negotiation or a trial to be the appropriate sentence for the crime and the offender.

Second, interviewed judges stated they are reluctant to depart from mandatory minimum sentences even when they have the statutory authority to do so because of the political stigma and potential impact during the legislative reappointment process. Judges do not want to be labeled as "soft on crime," which they believe would be the backlash to using their discretion under a presumptive sentencing law even though it is statutorily authorized. However, as shown in Section 2, particularly for drug sale offenses, judges tend to depart from the mandatory minimum penalties and impose lesser sentences. It appears from the data, despite their concerns judges are using their presumptive sentencing authority.

If the state's mandatory minimum sentencing policy was amended to presumptive sentencing, most judges interviewed believe the mitigating criteria should be legislatively defined as it is with the drug sale offenses. The statutory criteria would provide guidance for judicial discretion in departing from the mandatory minimum penalty. It would shield judges from any political backlash from using their discretion.

*Based on the aforementioned and the data analysis, the impact the actual application of mandatory minimum sentencing laws on the criminal justice system and the crime rate is*

*negligible. However, the indirect impact of these laws on the plea bargaining process is considerable. About one-third of offenders arrested for crime carrying mandatory minimum penalties are actually convicted and sentenced to mandatory penalties. Most persons arrested for mandatory minimum penalty offenses are either not convicted or convicted of lesser crimes. For those that are convicted, the statutory parole eligibility criteria and the parole board's parole eligibility calculation process potentially minimizes the requirement for inmates to serve the mandatory minimum sentence, which is directly contrary to the original intent of the laws. However, many inmates convicted of mandatory minimum penalty crimes receive sentences greater than the mandatory minimum term and inmates serving mandatory minimum prison terms tend to serve most of their sentences prior to being parole or released early by the Department of Correction. Given that, many inmates do in fact serve the mandatory minimum sentence terms.*

### **Public Perception of Mandatory Minimum Sentencing Laws**

In recent years, mandatory minimum sentencing laws have come under increasing attack. It is argued the laws have not achieved the intended goals of reducing crime, curbing drug use, and ensuring serious and violent offender are incarcerated for longer periods. *Overall, program review committee found mandatory minimum sentencing laws have achieved, to some extent, most of the intended purposes.*

Opponents further argue mandatory minimum sentencing laws have resulted in serious, but unintended consequences: racial and ethnic inequities in the criminal case disposition and sentencing process; unduly harsh sentences; and prison overcrowding. It is doubted that mandatory minimum penalties have any significant deterrent effects on criminal behavior.

*Plea bargaining has the biggest impact on the criminal case disposition and sentencing process. Mandatory minimum sentencing laws are an effective and efficient tool in plea bargaining. As shown in Section 1, most persons arrested for mandatory minimum penalty offenses are convicted of lesser offenses not subject to mandatory minimum penalties. Absent these laws, however, prosecutors would still have the authority to charge defendants with crimes and to recommend sentences within the broad statutory sentencing guidelines. Reducing the charge and/or sentence would still be sufficient incentive for defendants to agree to negotiated pleas. Therefore, there is no evidence to suggest the criminal case disposition process or outcomes would be different.*

As stated, mandatory minimum sentencing laws are not driving the use of prison resources. They are only a component of the state's sentencing framework. Prison overcrowding is caused by several factors<sup>19</sup> and, at most, the mandatory minimum sentencing laws only contribute to the cumulative effect of these factors.

Sentencing is a public policy concern. Sentencing options and ranges are set out in state laws. Sentences that are within the statutory guidelines, therefore, must be considered fair. However, political and public opinions about crime and its punishment can change. Sentences

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<sup>19</sup> Refer to the Legislative Program Review and Investigations Committee report on *Factors Impacting Prison Overcrowding* (2000).

that were once viewed as fair and appropriate may eventually be perceived as unfair or unduly harsh.

Based on national and state polling, the public's perception of basic mandatory minimum sentencing is at odds with both the legislative intent and the criminal justice system's application of the laws. Polling data<sup>20</sup> show Connecticut residents are increasingly supportive of relaxing mandatory minimum sentences and investing in more alternatives to incarceration options to address criminal justice issues such as prison overcrowding. Residents want violent offenders in prison, but acknowledge not all offenders should be incarcerated. This suggests a shift in public opinion from the "tough on crime" attitude of the 1980s and 1990s to a more comprehensive and cost-effective approach to crime. *However, change in the state's sentencing laws to lessen the punishments for certain crimes is a matter of public policy for the General Assembly to determine.*

Racial and ethnic disparity is a complex problem in the criminal justice system. The Commission of Racial and Ethnic Disparity in the Criminal Justice System<sup>21</sup> reported, for example, that African American and Latino/Hispanic defendants were more likely to be charged with felonies and the charges were more likely to be associated with mandatory minimum sentences. The commission reported Caucasian offenders have a lower incarceration rate than African American or Latino/Hispanic offenders. This rate is significantly below the national average for incarceration rates, and Connecticut ranks the highest in the United States in its level of disparity in the incarceration rates of Caucasian, African American, and Latino/Hispanic offenders.

The program review committee found the racial and ethnic breakdowns among persons arrested for mandatory minimum penalty offenses and inmates in prison serving mandatory minimum sentences was consistent with prior analyses of the racial and ethnic composition of the general arrestee and inmate populations. While minority persons are consistently overrepresented among the different categories and types of offender populations, they were not more so among persons arrested for mandatory minimum offenses or sentenced to mandatory minimum penalties.

Racial and ethnic disparity is a term that is often used interchangeably with overrepresentation, underrepresentation, and discrimination. The commission reported, "misuse of these terms can fuel emotionally and politically charged dialogue in negative ways, " and that "neither overrepresentation, underrepresentation, nor disparity necessarily imply discrimination."

There is not one identified cause or predictor of racial and ethnic disparity, overrepresentation, underrepresentation, or discrimination. They are often caused by various socio-economic and cultural issues and can be the unintended consequences of the state's criminal justice, social, and economic policies.

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<sup>20</sup> University of Connecticut poll of a sample of Connecticut residents conducted in 2004.

<sup>21</sup> The Commission of Racial and Ethnic Disparity in the Criminal Justice System within the Judicial Branch was statutorily created in 2000 (P.A. 00-154), to compile research about and make recommendations addressing racial and ethnic disparity in Connecticut's adult criminal justice and juvenile justice systems. The commission's first report was published in 2002 and it released its second (covering 2003-2004) in January 2005.

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Impacting disparity, overrepresentation, underrepresentation and discrimination in sentencing rates will take a coordinated and comprehensive effort by the criminal justice system and other government-administered systems (e.g., education, housing, and employment). With that said, however, any change that relaxes the mandatory minimum sentencing laws such as presumptive sentencing may be viewed by the public and opponents of the laws as a positive step.

### **Sentencing Task Force**

**The General Assembly shall establish the Connecticut Sentencing Task Force to review the state's crime and sentencing policies and laws in the interest of creating a more just, effective, and efficient system of criminal sentencing.**

**To accomplish its mandate, the sentencing task force shall, but not be limited to:**

- identify overarching state crime and sentencing goals and policies;**
- define current sentencing models including sentencing guidelines, criteria, exemptions, and enhancements;**
- analyze sentencing trends by offense types and offender characteristics;**
- review the actual versus intended impact of sentencing policies;**
- determine the direct and indirect costs associated with sentencing policies; and**
- make recommendations to amend the state's crime and sentencing policies.**

**The Connecticut Sentencing Task Force shall be composed of the following members:**

- House and Senate chairpersons of the Judiciary Committee, who shall serve as co-chairpersons of the task force;**
- two Superior Court judges from different judicial districts, each of whom has been a judge for at least 10 years and has at least five years experience in Part A criminal courts, appointed by the chief court administrator;**
- two state's attorneys with at least 10 years experience and with at least five years experience in Part A criminal courts, appointed by the chief state's attorney;**
- two public defenders with at least 10 years experience and with at least five years experience in Part A criminal courts, appointed by the chief public defender;**
- two private defense attorneys with at least 15 years experience in criminal law, with one attorney recommended by the criminal section of the Connecticut Bar Association and the other recommended by the**

**Connecticut Criminal Defense Lawyers Association, both appointed by the governor;**

- **the executive director the Judicial Branch's Court Support Services Division or his or her designee;**
- **the commissioner of the Department of Correction or his or her designee;**
- **the chairperson of the Board of Pardons and Paroles or his or her designee;**
- **the commissioner of the Department of Mental Health and Addiction Services or his or her designee;**
- **the undersecretary of the Office of Policy and Management's Division of Criminal Justice Policy and Planning;**
- **an assistant attorney general from the criminal justice section of the Office of the Attorney General appointed by the attorney general;**
- **three chiefs of police representing police departments with jurisdiction in urban, suburban, and rural municipalities respectively, appointed by the governor; and**
- **six legislators appointed as follows: one each by the speaker of the house, the senate president pro tempore, the majority leader of the house, the minority leader of the house, the majority leader of the senate, and the minority leader of the senate.**

**The Connecticut Sentencing Task Force shall take effect July 1, 2006 and submit a report on its findings and recommendations to the Judiciary Committee by December 1, 2008. The task force shall terminate at the conclusion of its work.**

**The Division of Criminal Justice Policy and Planning,<sup>22</sup> within the Office of Policy and Management, shall assist the Connecticut Sentencing Task Force by providing the necessary criminal justice data, analyses, and technical assistance necessary for the task force to meet its mandate and reporting requirement. Executive and judicial branch criminal justice agencies shall also provide data and technical assistance as requested by the sentencing task force.**

Overall, during the past 25 years, despite a disjointed approach to developing and implementing sentencing reform, Connecticut has enacted a sentencing framework that includes the elements often recommended by criminal justice researchers and national sentencing experts. However, the underlying concepts of some sentencing reforms appear to conflict, while other reforms appear to be complementary. Evaluations of the Connecticut criminal justice system

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<sup>22</sup> Public Act 05-249 created the Division of Criminal Justice, within the Office of Policy and Management, to promote a more effective and cohesive criminal justice system. The division, which takes effect July 1, 2006, is specifically required to conduct in-depth analyses of the criminal justice system to determine the long range needs of and identify critical problems in the criminal justice system. It is further required to recommend strategies and plans to address these issues. To this end, the division is further required to collect and analyze a variety of criminal justice data including sentencing data.

found the administration of several key sentencing policies such as mandatory minimum penalties have resulted or have been perceived as resulting in unintended outcomes.

It has been more than 25 years since Connecticut has comprehensively reviewed its sentencing policy and laws. In 1979 (Public Act 79-96), the legislature created a sentencing commission to establish sentencing policies and practices for the state criminal justice system that ensured the sentencing goals of punishment, deterrence, incapacitation, and rehabilitation would be accomplished. The commission was responsible for recommending sentencing options, guidelines, and ranges.

After submitting its recommendations in a final report (March 12, 1980), the sentencing commission was charged with evaluating the impact of the recommended sentencing reform, which was a shift from indeterminate to determinate sentencing. In 1984, at the conclusion of its review, the commission was terminated.

Many states and the federal government have permanent sentencing commissions. The United States Sentencing Commission, which develops the sentencing matrix used in the federal criminal court system, is the most familiar model. However, the composition and responsibilities of the commissions vary. Many are required to conduct on-going analyses of sentencing trends to ensure laws are and can be administered in accordance with state sentence policy, rather than setting nondiscretionary sentencing requirements like the United States Sentencing Commission. Some commissions also provide information and rationale for any changes to a state's overall sentencing policy, penal codes, and sentencing laws.

The recommended sentencing task force is similar to the 1980 Connecticut Sentencing Commission in that it is not a permanent entity. It is given an 18-month time frame in which to complete its work mandate, and would terminate in 2008.

**Other options.** Much of the evidence presented in the program review committee report could be viewed as supporting the repeal of the mandatory minimum sentencing laws. For opponents of these laws, this may appear to be a more satisfactory -- and logical -- conclusion to the issues frequently linked to mandatory minimum sentencing.

The evidence can also be seen as grounds for expanding presumptive sentencing authority to all offenses currently subject to mandatory minimum sentencing laws. Expanding presumptive sentencing would give limited discretion to judges to depart from mandatory minimum penalties under certain mitigating circumstances, which could be defined statutorily. This is obviously a less drastic approach than outright repeal of the laws, and one that would most likely be supported by opponents of mandatory minimum sentencing laws.

Under either option, Connecticut's existing criminal sentencing laws are sufficient to achieve the same sentences for the offenses currently subject to mandatory minimum penalties and to maintain general criminal sentencing patterns. Trends to date presented in this report suggest judges would not interpret the repeal of mandatory minimum sentencing laws or expansion of presumptive sentencing to impose lesser sentences for criminal convictions, especially those serious violent offenses currently subject to mandatory minimum penalties.



Furthermore, it is unlikely state's attorneys would significantly alter prosecutorial procedures and tactics.

Repealing mandatory minimum sentencing laws may hinder the efficiency of the existing process of plea bargaining since state's attorneys would no longer have the options of offering to reduce a mandatory minimum penalty charge in exchange for a negotiated plea and sentence. The state's attorneys' unilateral authority to charge a defendant with a crime and make sentencing recommendations would not be amended in any way. Therefore, the impact would, at the most, lengthen the time it now takes for the parties to reach an agreement on plea bargains, but again the state's attorney's authority to charge would most likely compensate for any lag in the process that may occur.

At this time, there are two reasons why the committee believes these are not the best options to address the issues surrounding mandatory minimum sentencing laws. First, mandatory minimum sentencing is only a small part of the overall sentencing framework in Connecticut. It is simplistic to conclude repealing the state's mandatory minimum sentencing laws or even expanding presumptive sentencing authority would result in any appreciable changes to the trends in criminal charges and sentences and incarceration rates or any real changes to the broad systemic and socioeconomic issues that ultimately result in unduly harsh sentences, overrepresentation of minorities in system, and prison overcrowding. Most likely there would be no long term change in all phases of the criminal justice process.

Racial and ethnic disparity, unduly harsh sentences, and prison overcrowding are complex problems in the criminal justice system. There is not one identifiable cause or predictor of racial and ethnic disparity or of any sentencing trends. They are often caused by various political, socio-economic, and cultural issues and can be the unintended consequences of the state's criminal justice, social, and economic policies. Impacting -- or reversing -- these trends will take a coordinated and comprehensive effort by the criminal justice system and other government-administered systems (e.g., education, housing, and employment).

Even though selected changes to relax the mandatory minimum sentencing laws such as repeal or expansion of presumptive sentencing may be viewed by the public and the laws' opponents as a positive step, the program review committee believes its recommendation for a comprehensive review of all crime and sentencing policies by the sentencing task force is the best action to take at this time. The sentencing task force can examine all the factors directly causing and perceived to be causing all the sentencing problems identified in Connecticut.

Second, as stated, mandatory minimum sentencing policy is a compelling symbol of the "tough on crime" political message and the "crime of the week" political pressures. The laws were enacted in large part to send strong messages that violent crime, drug use (particularly when children are involved) and drunk driving will not be tolerated in Connecticut. This is a powerful political argument from a public relations point of view for continuing these laws.

Selected legislators interviewed indicated they support the laws because it is effective for them to respond on the record to constituent concerns about crime. Legislators familiar with criminal justice issues recognize the flaws in the sentencing policy. At the same time, they

acknowledge that judges and prosecutors (and defense attorneys) have the discretion and means to circumvent the mandatory minimum sentencing laws in many cases to achieve fair and appropriate sentences.

In general, changes to reduce prison time and provide lesser sanctions through alternative penalty options are often viewed as being “soft on crime.” Therefore, the state’s elected officials are reluctant to take actions such as repealing the mandatory minimum penalties. While there seems to be growing public acceptance based on national poll results that other alternative sanctions strategies are as or more effective than prison, broad political acceptance has yet to be achieved. Changes to the state’s sentencing policies will not be successful without a shift in the current political climate.

The committee’s recommendation will allow time for elected officials and the public to consider the benefits of certain sentencing policy changes. In addition, any potential changes to the mandatory minimum sentencing laws should be made within the context of the overall state sentencing framework.

### **Fiscal Impact Assessment**

As the history of sentencing reform in Connecticut shows, the legislative agenda on crime and sentencing will always be subject to change. The recommended sentencing task force is a temporary entity, terminating in December 2008 at the conclusion of its work. The General Assembly, therefore, must continue to be fully informed of any implications of sentencing and crime legislation under consideration and the potential for fiscal and administrative impacts that may have to be addressed in the future.

Sentencing reform and criminal justice strategies have costs associated with them. In the past, it appears sentencing reforms have been enacted without regard for fiscal considerations and constraints. The state budget crises created an urgent need to reassess state sentencing and criminal justice policies in light of limited resources and other state priorities (e.g., health care, education, transportation infrastructure). The fiscal consequences of the actual impact of sentencing and criminal justice policies must be considered as well as the public message and the intended impacts.

**A fiscal impact assessment shall be required on the likely effects of any proposed legislation on prisons, jails, probation, parole, court resources and dockets, and on public safety and victim’s rights. The fiscal impact assessment shall be conducted by the General Assembly’s Office of Fiscal Analysis (OFA) and the Office of Legislative Research (OLR).**

The legislature has already realized the need for similar information and currently requires a fiscal analysis and bill summary for all proposed legislation. In preparing the fiscal impact assessment, OLR and OFA shall review, but not be limited to, the following data:

- rates of arrest;
- rates of prosecution;
- sentencing trends by type of offense and length;

- incarceration rates and prison capacity;
- rates of prison admission and discharge;
- rates of offenders sentenced to probation or any other alternative sentencing option or sanction;
- computation of time served in prison;
- parole eligibility criteria;
- bail, probation, alternative sanction, and parole caseloads;
- capacity of community-based services and programs;
- rate of pre-trial defendants released on bail or incarcerated pending disposition of their criminal cases; and
- any other information necessary for analysis (e.g., offender demographics).

# Appendix A

## Offenses Subject to Mandatory Minimum Sentences

Connecticut has adopted two versions of mandatory minimum sentences: “traditional” mandatory minimum sentences and presumptive sentences. The difference is that a judge may exercise his or her discretion to depart from a mandatory minimum prison term under presumptive sentencing (with an on-the-record articulation of why), whereas under a “traditional” mandatory minimum sentence there is no opportunity for discretion.

### Mandatory Minimum Sentences

In general, Connecticut’s mandatory minimum sentencing laws require a judge to impose, at a minimum, a statutorily set prison term that cannot be suspended in part or in total for certain criminal offenses. However, depending on the charges for which the defendant is convicted, a judge has discretion to impose a sentence *greater* than the mandatory minimum sentence. A judge may also impose a post-incarceration supervision sanction such as a period of special parole or probation.

Table A-1 lists the specific criminal offenses covered by the law.

Table A-1. Offenses with Mandatory Minimum Sentences		
CGS	Offense	Mandatory Minimum
<b>Class A Felony</b>		
53a-54a	Murder (other than a capital or felony)	25 years
53a-54c	Felony murder	25 years
53a-70(a)(1)*	Forcible sexual assault in the first degree of victim under 16	5 years and the prison term plus a period of special parole must equal at least 10 years
53a-70(a)(2)*	Sexual assault in the first degree of victim under 13 if offender is more than 2 years older	10 years and the prison term plus a period of special parole^ must equal at least 10 years
53a-70a*	Aggravated sexual assault  Aggravated sexual assault of victim under 16 (as per 53a-70(a)(1))	5 years and at least 5 years special parole  20 years if deadly weapon used in crime and at least 5 years special parole
53a-92	Kidnapping in the first degree	1 year pursuant to <i>State v. Jenkins</i> (1986)
53a-92a*	Kidnapping in the first degree with firearm	1 year
53a-28 53a-29	All other class A felonies other than those listed above and except arson in the first degree  • Assault in the first degree of a pregnant woman	10 years

<b>Table A-1. Offenses with Mandatory Minimum Sentences</b>		
<b>CGS</b>	<b>Offense</b>	<b>Mandatory Minimum</b>
	resulting in termination of pregnancy (53a-59c)** <ul style="list-style-type: none"> <li>Employing a minor in an obscene performance (53a-196a)</li> </ul>	
<b>Class B Felony</b>		
53a-55a*	Manslaughter in the first degree with firearm	5 years
53a-59*	Assault in the first degree	5 years if deadly weapon or dangerous instrument used 10 years if victim under age 10 or is a witness
53a-59a	Assault in the first degree on elderly, blind, disabled, pregnant, or mentally retarded person**	5 years
53a-70*	Sexual assault in the first degree	2 years 10 years if victim under age 10 Prison term and period of special parole must equal 10 years
53a-70a*	Aggravated sexual assault in the first degree	5 years and at least 5 years special parole
53a-71	Sexual assault in the second degree of victim under age 16	9 months
53a-72b*	Sexual assault in the third degree with firearm of victim under age 16	2 years and a period of special parole which together total 10 years
53a-94*	Kidnapping in the second degree	1 year pursuant to <i>State v. Jenkins</i> (1986), but penal code requires 3 years
53a-94a*	Kidnapping in the second degree with firearm	1 year pursuant to <i>State v. Jenkins</i> (1986), but penal code requires 3 years
53a-101	Burglary in the first degree armed with deadly weapon, explosive, or dangerous instrument	5 years
53a-134*	Robbery in the first degree armed with deadly weapon	5 years
53a-301	Computer crime in furtherance of terrorism directed toward public safety agency	5 years
<b>Class C Felony</b>		
53a-56a*	Manslaughter in the second degree with firearm	1 year
53a-71	Sexual assault in the second degree	9 months
53a-72b*	Sexual assault in the third degree with firearm	2 years and a period of special parole which together total 10 years
53a-102a	Burglary in the second degree with firearm	1 year
53a-123	Larceny in the second degree if property "taken" from elderly, blind, disabled, pregnant, or mentally retarded person**	2 years pursuant to CGS §53a-60b
53a-165aa	Hindering prosecution in the first degree	5 years

<b>Table A-1. Offenses with Mandatory Minimum Sentences</b>		
<b>CGS</b>	<b>Offense</b>	<b>Mandatory Minimum</b>
53a-303	Contamination of public water or food for terrorism	5 years
53-202b	Sale, transfer, distribution, or transport of assault weapon	2 years 6 years if sale to minor under 18
<b>Class D Felony</b>		
14-223(b)	Subsequent conviction for increasing speed in attempt to allude police officer after being signaled to stop if both convictions involve death or serious physical injury	1 year
29-34	Illegal sale or transfer of handgun to minor under 21	1 year
53a-60a	Assault in the second degree with firearm	1 year
53a-60b	Assault or larceny in the second degree of elderly, blind, disabled, pregnant, or mentally retarded person**	2 years
53a-60c	Assault in the second degree with firearm of elderly, blind, disabled, pregnant, or mentally retarded person**	3 years
53a-103a	Burglary in the third degree with firearm	1 year
53a-216	Criminal use of firearm or electronic defense weapon during commission of felony	5 years
53a-217	Criminal possession of firearm or electronic defense weapon	2 years
53-202c	Possession of an assault weapon	1 year
<b>Class A Misdemeanor</b>		
53a-61	Assault in the third degree with deadly weapon	1 year
53a-61a	Assault in the third degree of elderly, blind, disabled, pregnant, or mentally retarded person**	1 year
<b>Unclassified Offenses</b>		
14-36	Driving without a license or learner's permit 3 <sup>rd</sup> or subsequent conviction^^	90 days
14-215(c)	Driving during license suspension for DWI and DWI related offenses: 3 <sup>rd</sup> or subsequent conviction^^	90 days
14-227a(g)	Operating a motor vehicle under the influence of alcohol or drugs (DWI): (1) Second conviction within 10 years (2) Third and subsequent convictions within 10 years	120 days 1 year
15-133	Operating a vessel (boat) under the influence of alcohol or drugs (DWI): (1) Second conviction within 10 years (2) Third and subsequent convictions	120 days 1 year

Table A-1. Offenses with Mandatory Minimum Sentences		
CGS	Offense	Mandatory Minimum
	within 10 years	
21a-278a(a)	Sale of drugs (under 21a-277 or 21a-278) by non-drug-dependent to minor under 18 who is at least 2 years younger than defendant	2 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278
21a-278a(c)	Hiring, using, persuading, coercing a minor under 18 to sell drugs	3 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278
<p>*Crimes also subject to persistent dangerous felony offender provision.</p> <p>**In any prosecution for an offense based on the victim being pregnant or mentally retarded, it is an affirmative defense that the defendant at the time the crime was committed did not know the victim was pregnant or mentally retarded.</p> <p>^Special parole is a period of post-incarceration parole supervision imposed by a judge. Special parole differs from traditional discretionary parole in two ways: (1) discretionary parole is granted by the Board of Pardons and Paroles and is not within the jurisdiction of the sentencing judge; and (2) discretionary parole is an early release of an inmate from a court-imposed prison term whereas special parole is a period of parole supervision in addition to a prison term. An inmate can be released on discretionary parole under his or her prison term and then transition into a period of special parole after completing that prison term. The Department of Correction is responsible for supervising parolees released on discretionary parole and special parole.</p> <p>^^P.A. 05-215 established new mandatory minimum penalties effective October 1, 2005.</p> <p>NOTE: Offenders convicted after October 1, 1998 of a nonviolent or violent sexual assault offense or sexual assault offense against a minor must register as a sex offender with the Department of Public Safety (Megan's Law) and, beginning in 1994, submit a blood sample for analysis and inclusion in the department's DNA data bank.</p> <p>Source: Connecticut General Statutes</p>		

## Presumptive Sentences

A presumptive sentence means that upon conviction for a certain offense a specific mandatory minimum penalty is the “presumptive” sentence to be imposed unless a judge finds some extraordinary circumstances exist to impose a *more lenient* sentence. Generally, the penal code defines the mitigating circumstances (or “good cause”) under which a judge may depart from the presumptive mandatory minimum penalty, and the burden of proof is on the defendant to show good cause for sentencing departure. Table A-2 lists the offenses subject to presumptive sentencing laws.

Table A-2. Offenses with Presumptive Sentences		
Unclassified Offenses		
CGS	Offense	Presumptive Sentence
14-215(c)	Driving during license suspension for DWI and DWI related offenses: First conviction	30 days unless mitigating circumstances as determined by a judge
14-227a(g)*	Operating a motor vehicle under the influence of alcohol or drugs (DWI): First conviction	48 hours if not sentenced to community service

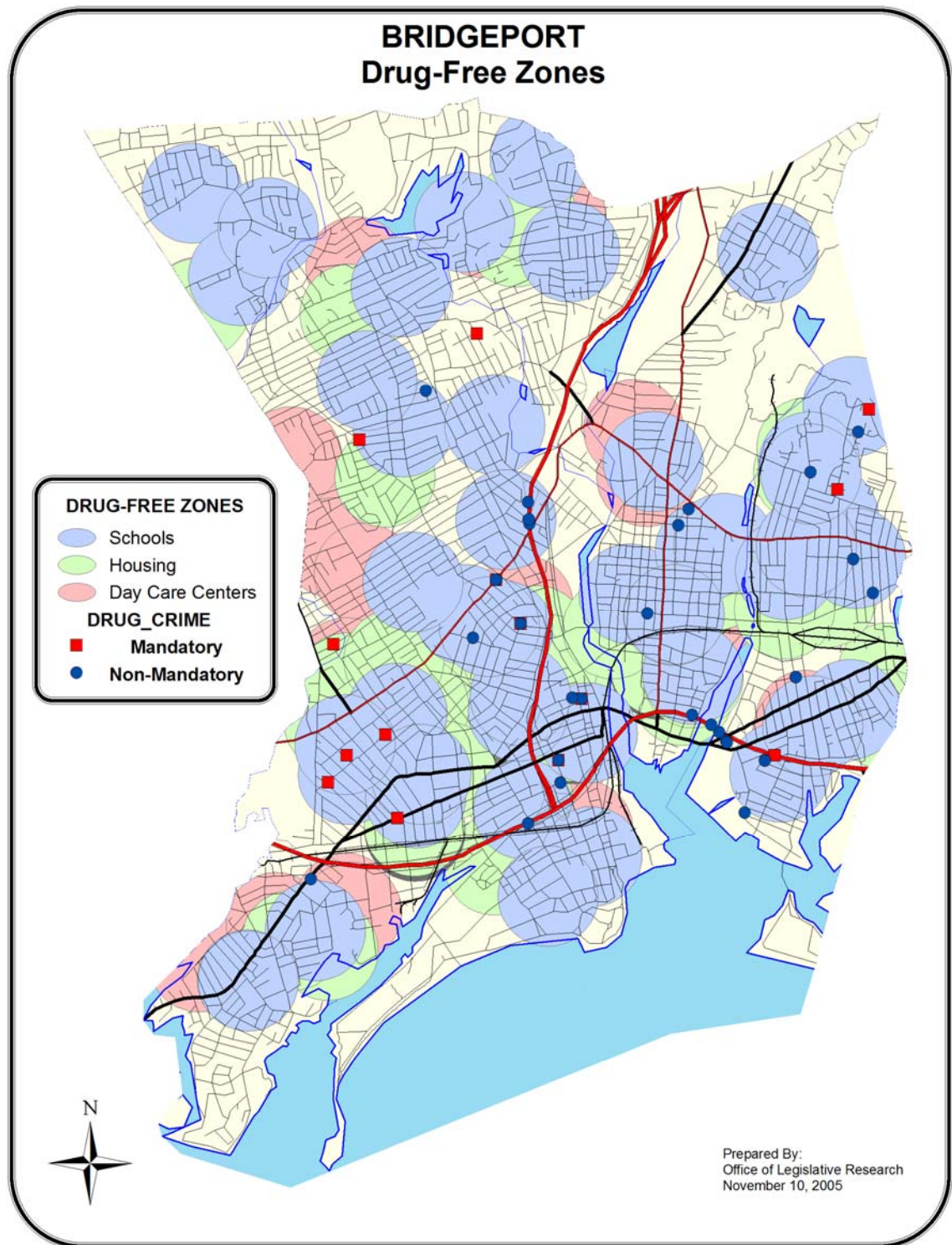
**Table A-2. Offenses with Presumptive Sentences**

<b>Unclassified Offenses</b>		
<i><b>CGS</b></i>	<i><b>Offense</b></i>	<i><b>Presumptive Sentence</b></i>
15-133	Operating a vessel (boat) under the influence of alcohol or drugs (DWI): First conviction	48 hours if not sentenced to community service
21a-267(c)	Use, possession, or delivery of drug paraphernalia by non-student near school	1 year in addition & consecutive to sentence imposed for underlying violation of subsection (a) possession or (b) delivery except upon showing of good cause & crime was nonviolent as determined by judge
21a-278(a)	Illegal manufacture or sale of the following drugs by non-drug-dependent person: <ul style="list-style-type: none"> <li>• 1 oz or more of heroin, methadone,</li> <li>• ½ oz or more of cocaine or cocaine in free-base form (“crack”)**</li> <li>• 5 milligrams or more of substance containing lysergic acid diethylamide (LSD)</li> </ul>	5 years to a maximum of life except if at time of crime: (1) defendant was under 18; (2) defendant’s mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution; or (3) upon showing of good cause & crime was nonviolent as determined by judge
21a-278(b)	Illegal manufacture or sale of the following drugs by non-drug-dependent person: <ul style="list-style-type: none"> <li>• any narcotic substance, hallucinogenic substance other than marijuana, or amphetamine</li> <li>• 1 kilogram or more of cannabis-type substance</li> </ul>	5 years for first offense or 10 years for subsequent offenses except if at time of crime: (1) defendant was under 18; (2) defendant’s mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution; or (3) upon showing of good cause & crime was nonviolent as determined by judge
21a-278a(b)	Sale of drugs (under 21a-277 or 21a-278) by non-drug-dependent person in, at, or within 1,500 feet of school, public housing, or day care center	3 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278 except upon showing of good cause & crime was nonviolent as determined by judge
21a-279(d)	Possession of any quantity of the following drugs in, at, or within 1,500 feet of licensed day care center or school by non-student: <ul style="list-style-type: none"> <li>• subsec. (a): any narcotic</li> <li>• subsec. (b): hallucinogenic other than marijuana or 4 ounces or more of cannabis-type substance</li> <li>• subsec. (c): less than 4 ounces of cannabis-type substance or any controlled substance other than a narcotic or hallucinogenic other than marijuana</li> </ul>	2 years in addition to & consecutive to sentence for underlying offense of 21a-279(a), (b), or (c) except upon showing of good cause & crime was nonviolent as determined by judge
29-37(b)	Carrying handgun without permit (29-35a)	1 year unless mitigating circumstances as determined by a judge

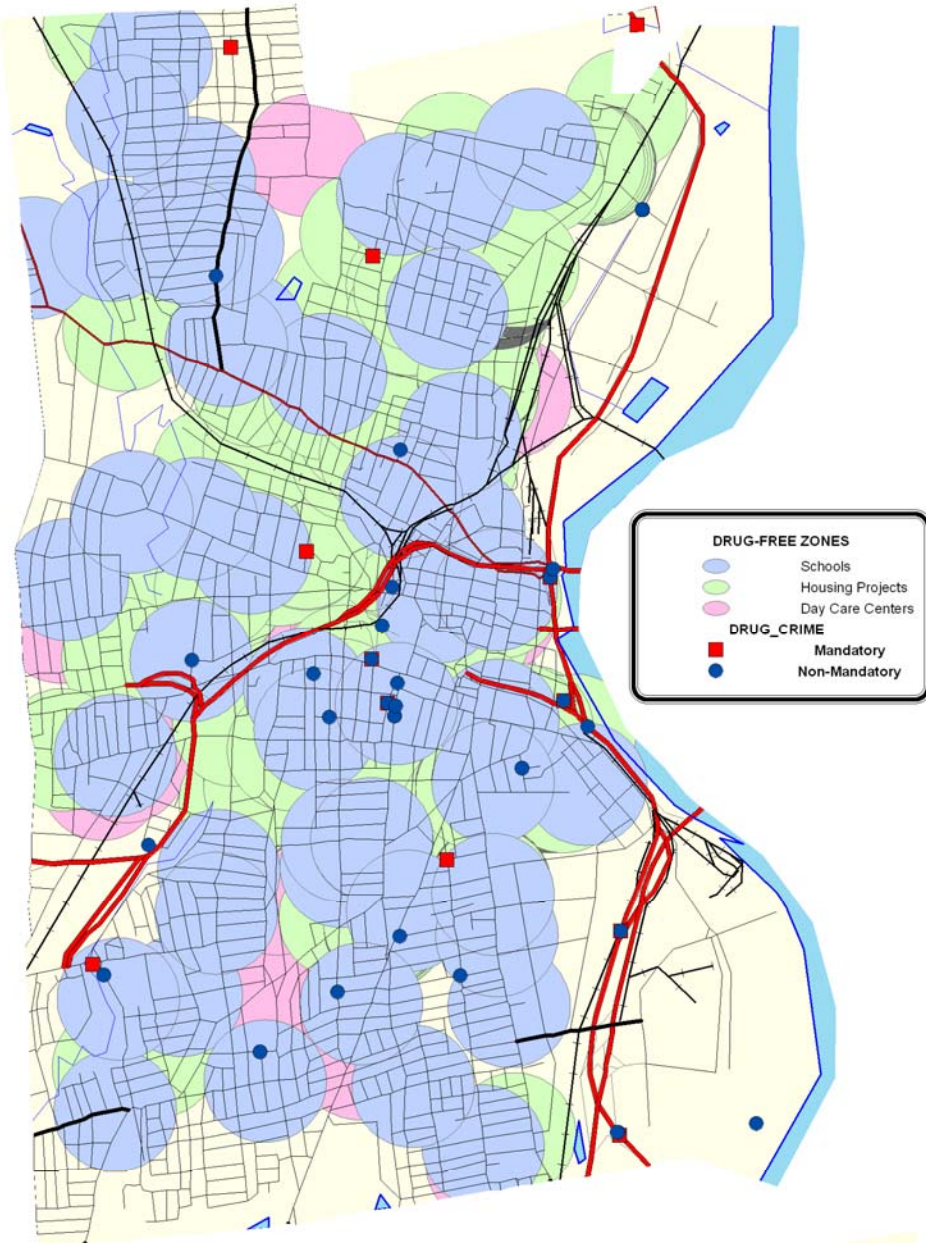


Table A-2. Offenses with Presumptive Sentences		
Unclassified Offenses		
<i>CGS</i>	<i>Offense</i>	<i>Presumptive Sentence</i>
<p>*Crime also subject to persistent dangerous felony offender provision.</p> <p>**P.A. 05-248 equalized the amounts for cocaine and “crack” cocaine. Prior to the change, the law set the amounts as at least 1 ounce for cocaine and at least ½ gram for “crack” cocaine.</p> <p>Source: Connecticut General Statutes</p>		

**Appendix B**  
**“Drug-Free” Zone Mapping Analysis**



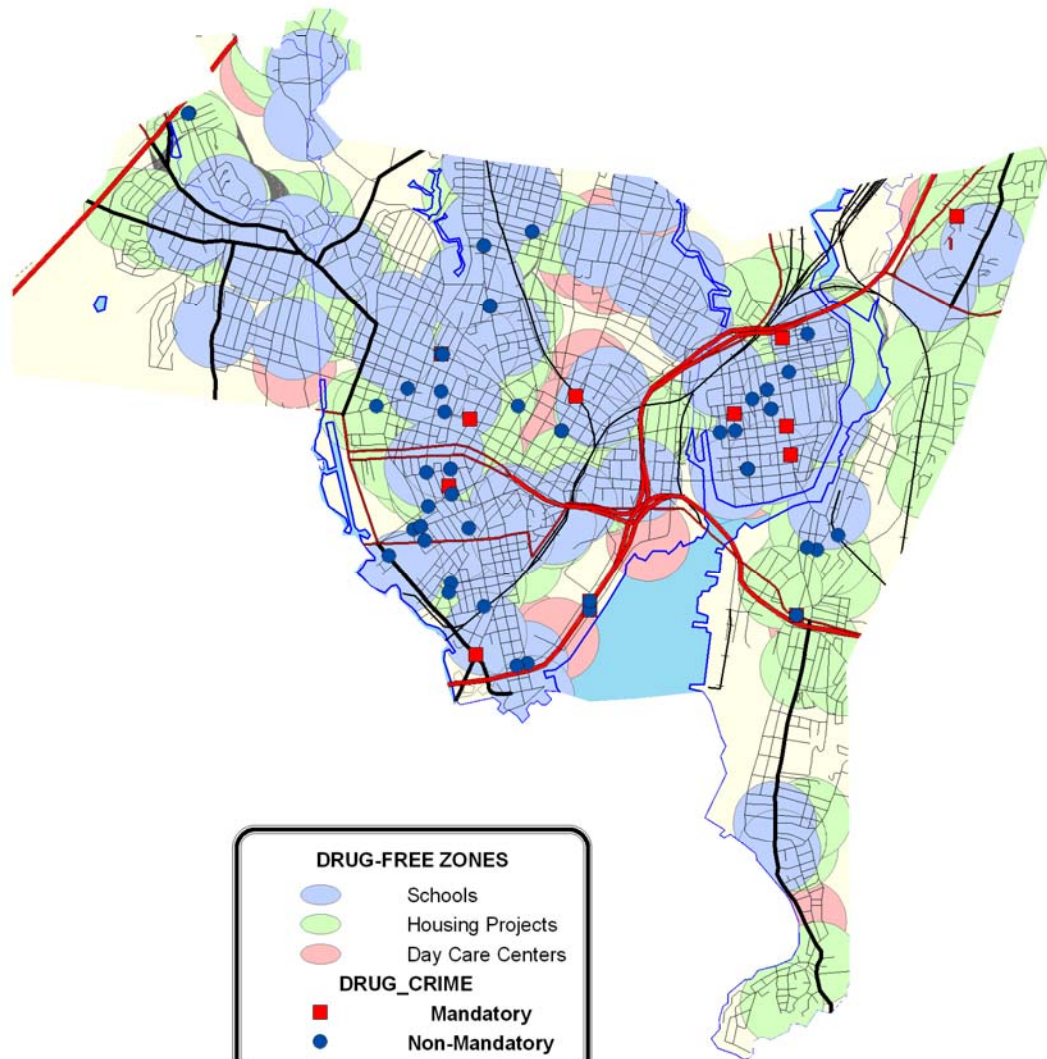
## HARTFORD Drug-Free Zones



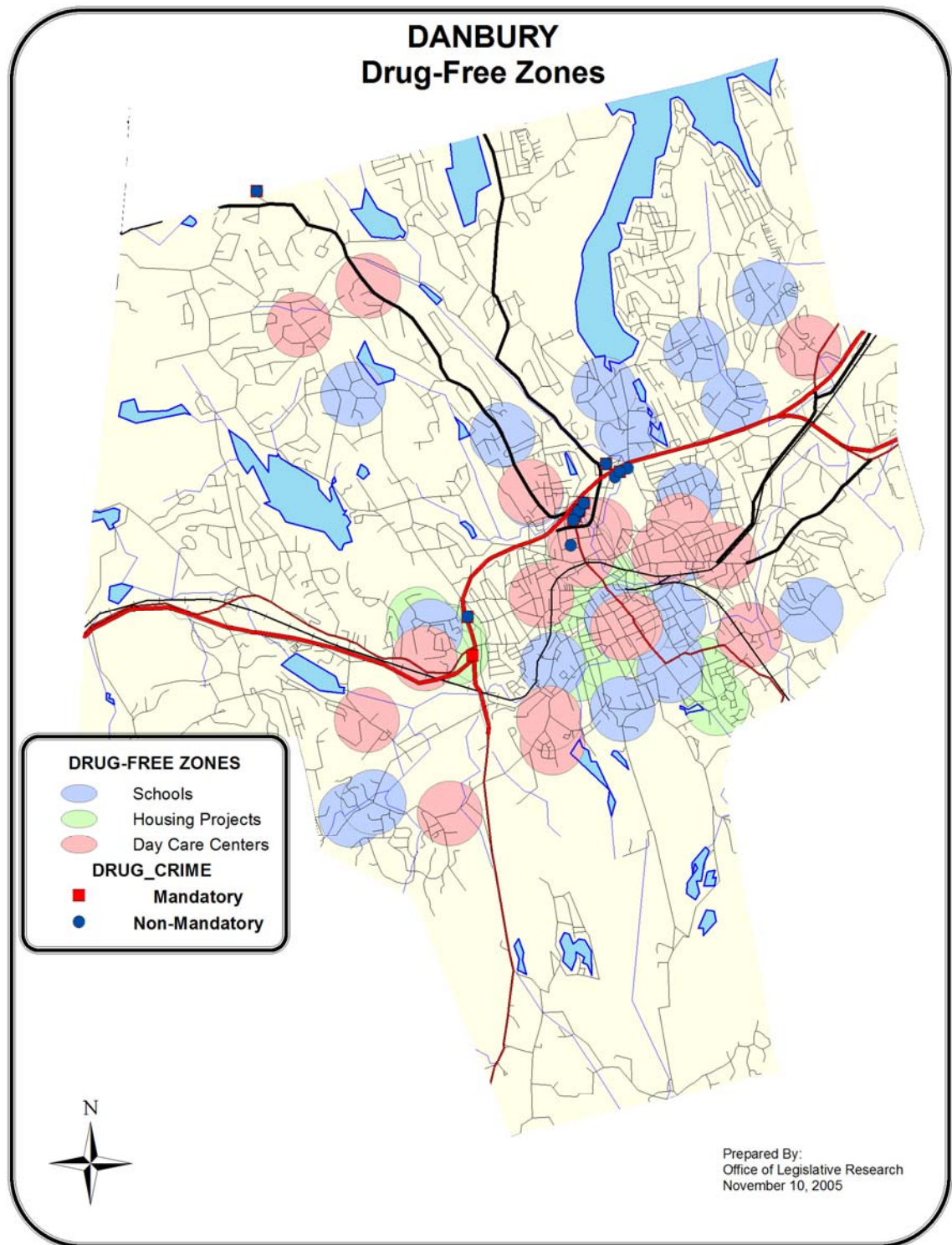
Prepared By:  
Office of Legislative Research  
November 14, 2005



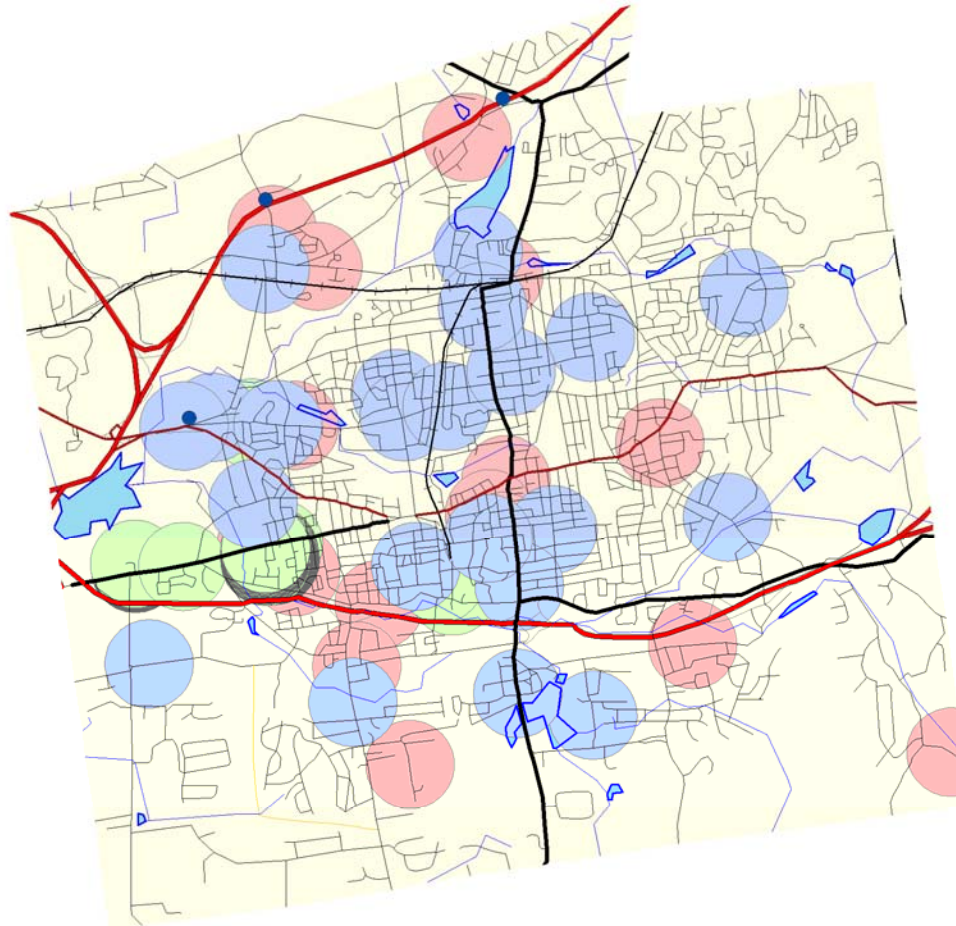
## NEW HAVEN Drug-Free Zones






Prepared By:  
Office of Legislative Research  
November 15, 2005





## MANCHESTER Drug-Free Zones



### DRUG-FREE ZONES

-  Schools
-  Housing
-  Day Care Center

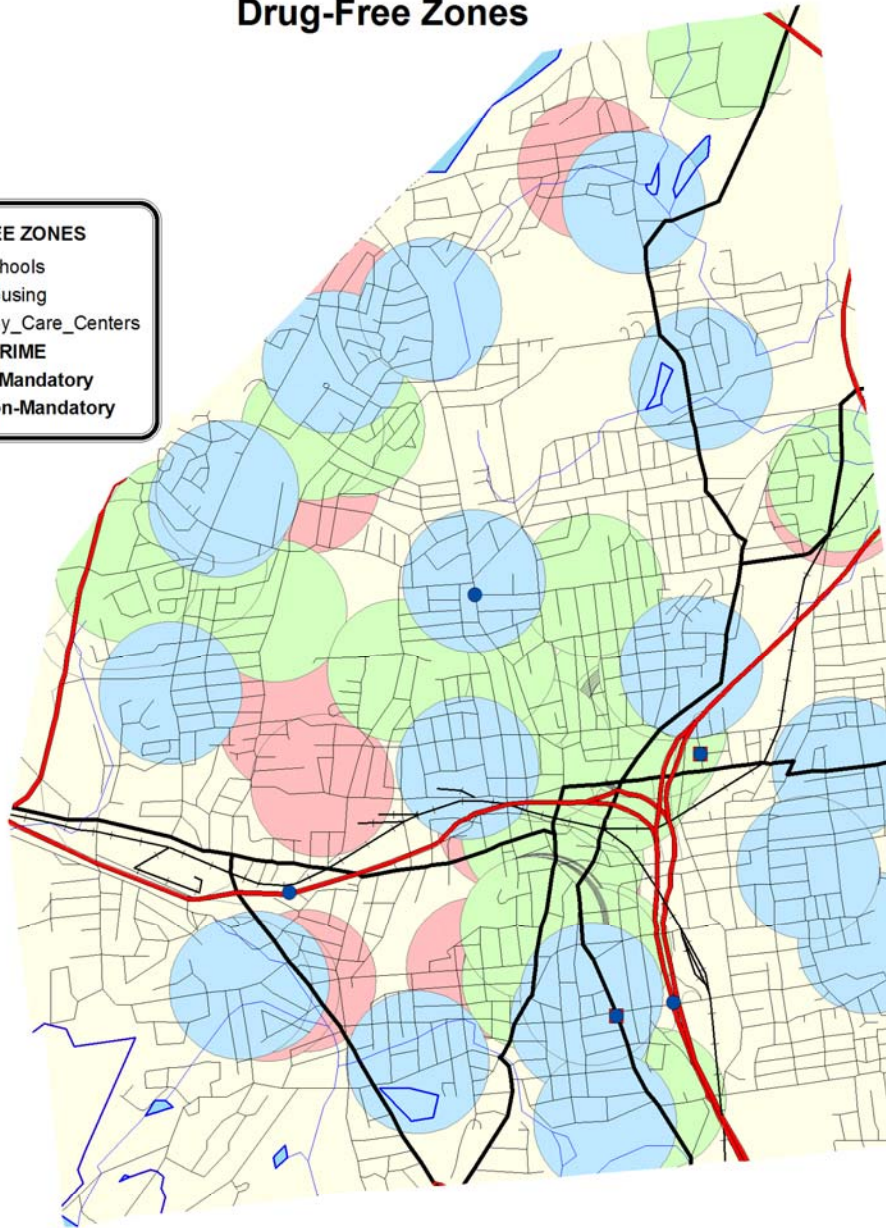
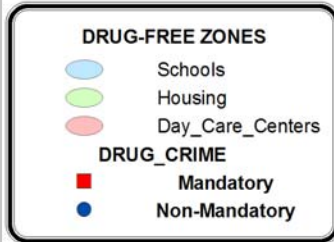
### DRUG\_CRIME

-  Mandatory
-  Non-Mandatory

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Office of Legislative Research  
November 14, 2005



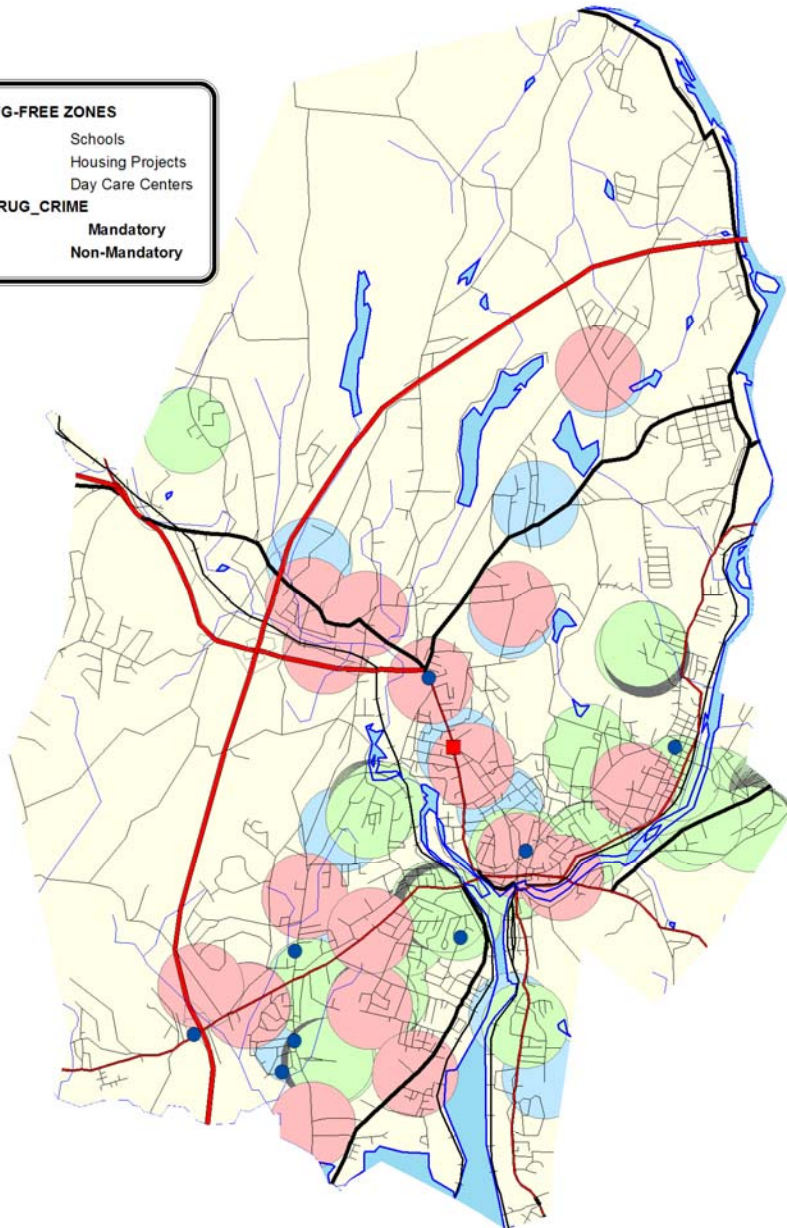
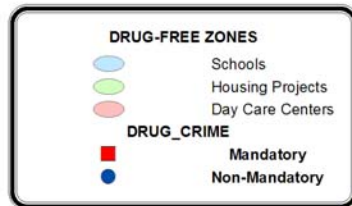
## NEW BRITAIN Drug-Free Zones



Prepared By:  
Office of Legislative Research  
November 10, 2005

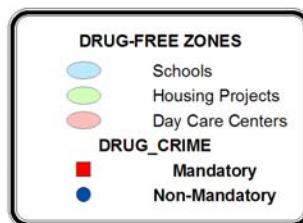
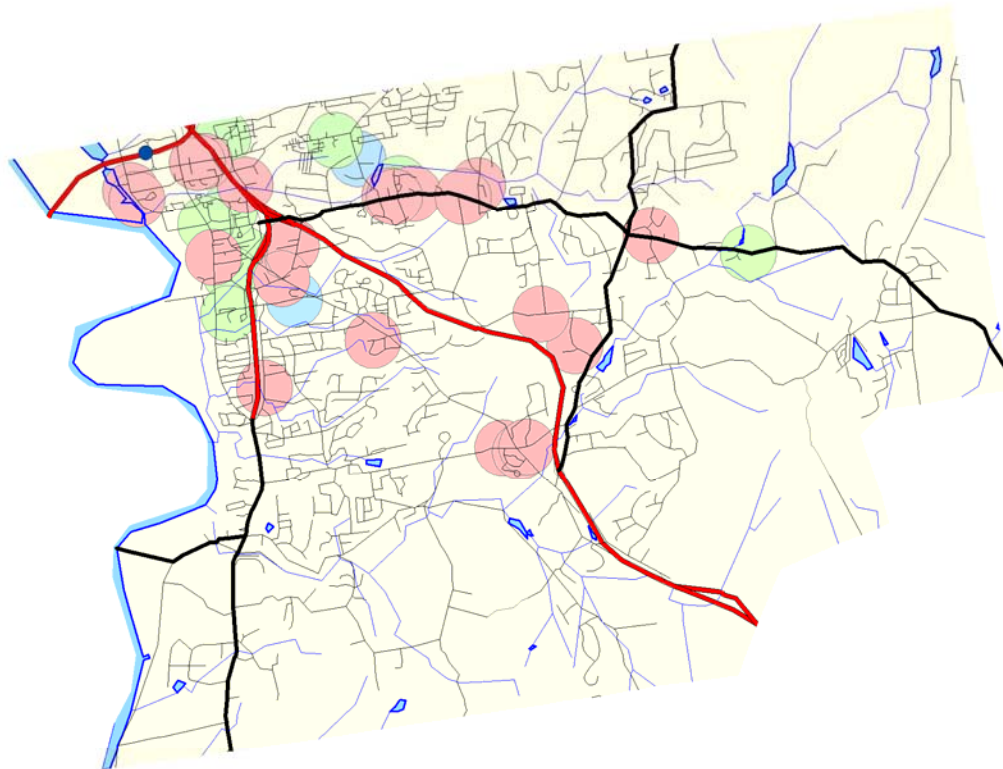


## NORWICH Drug-Free Zones

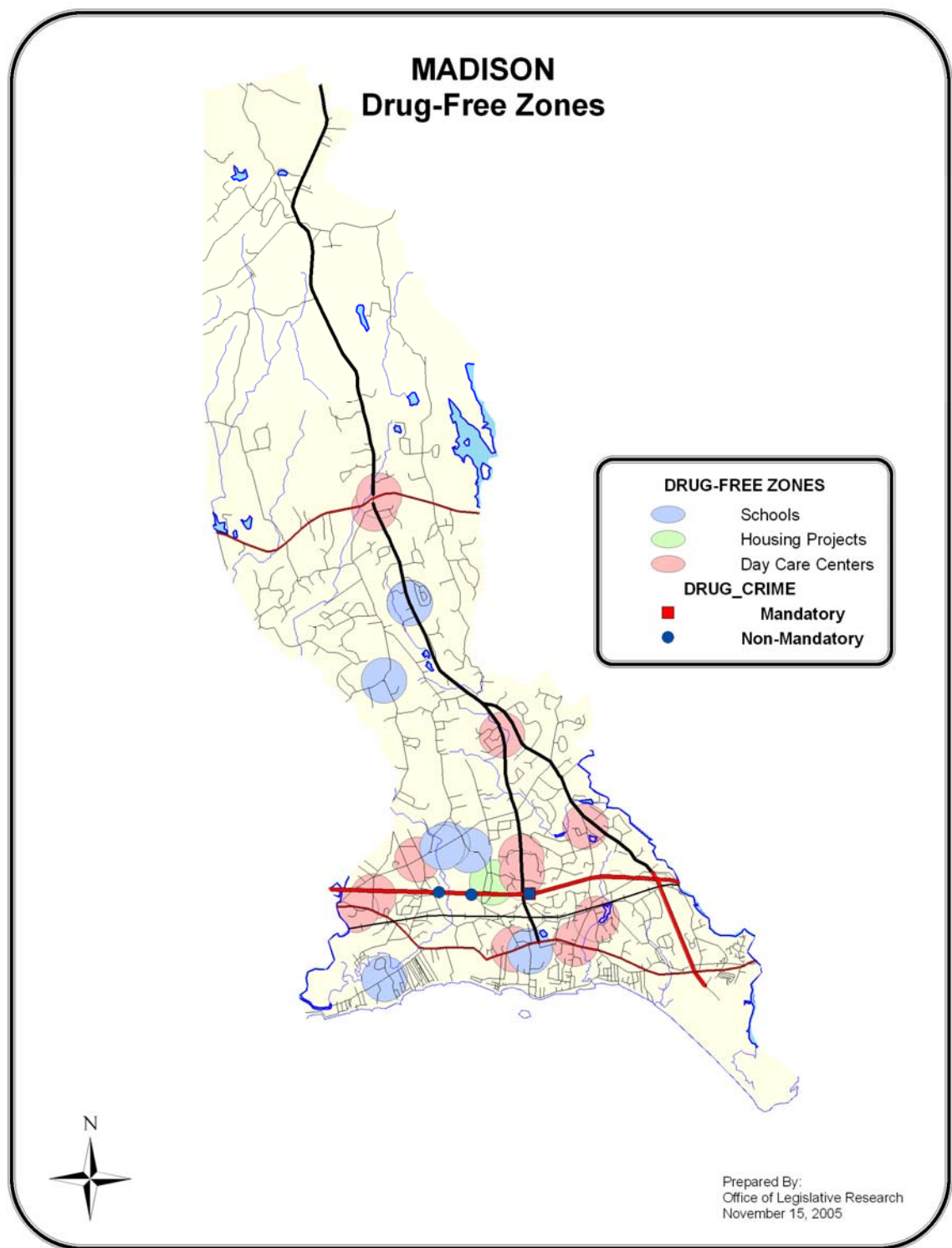


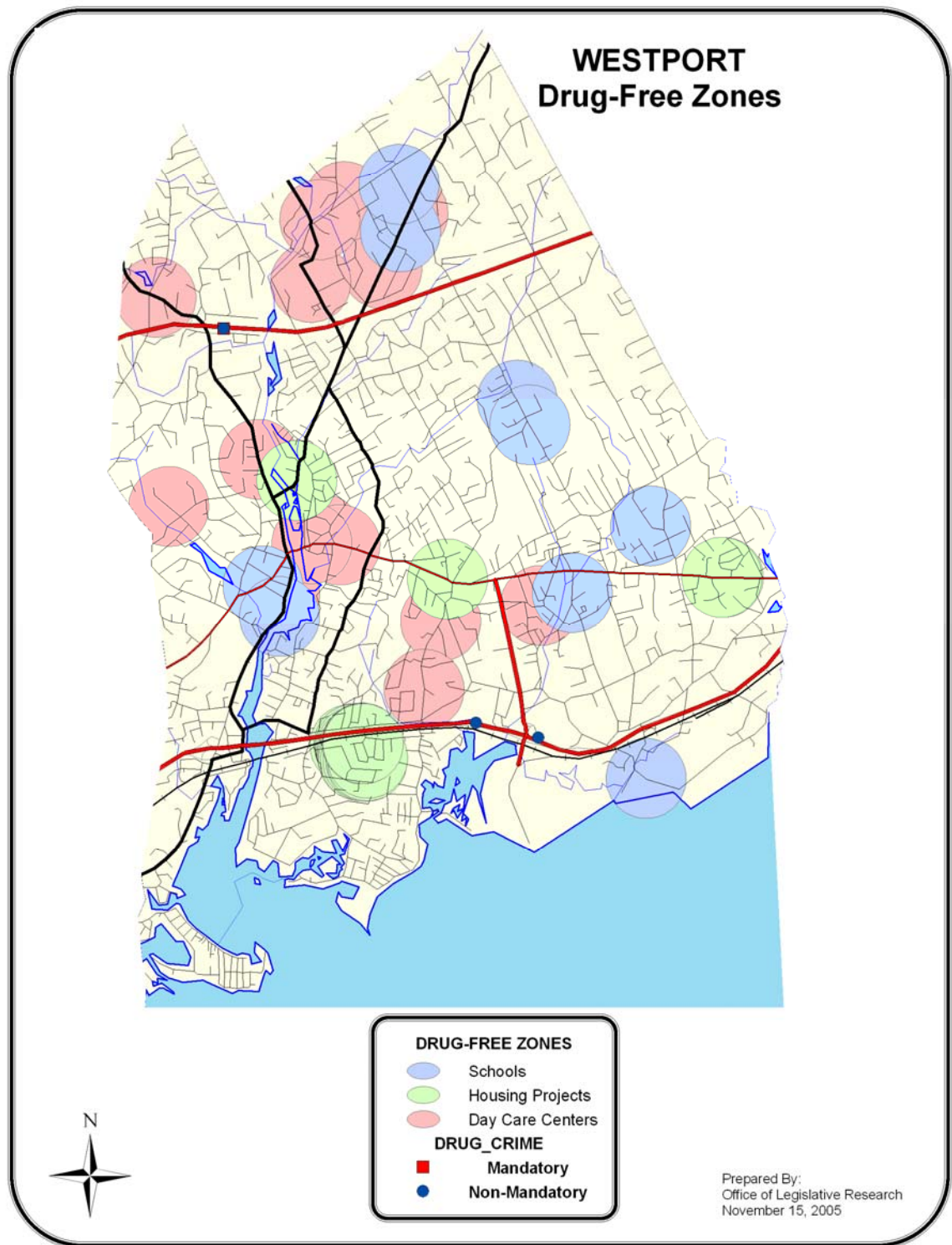
Prepared By:  
Office of Legislative Research  
November 14, 2005

## GLASTONBURY Drug-Free Zones



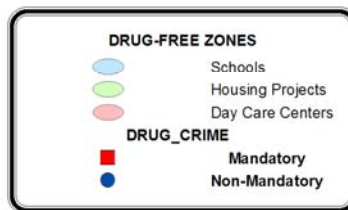
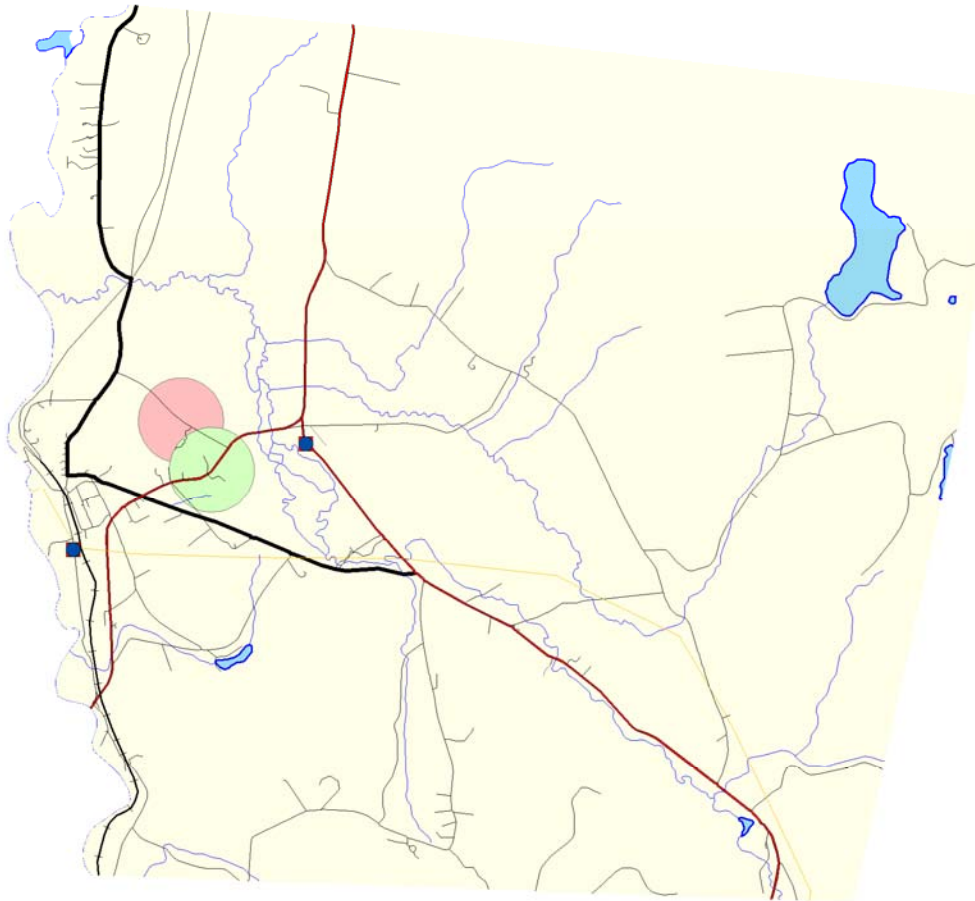
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Office of Legislative Research  
November 14, 2005





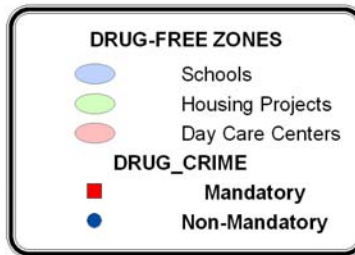
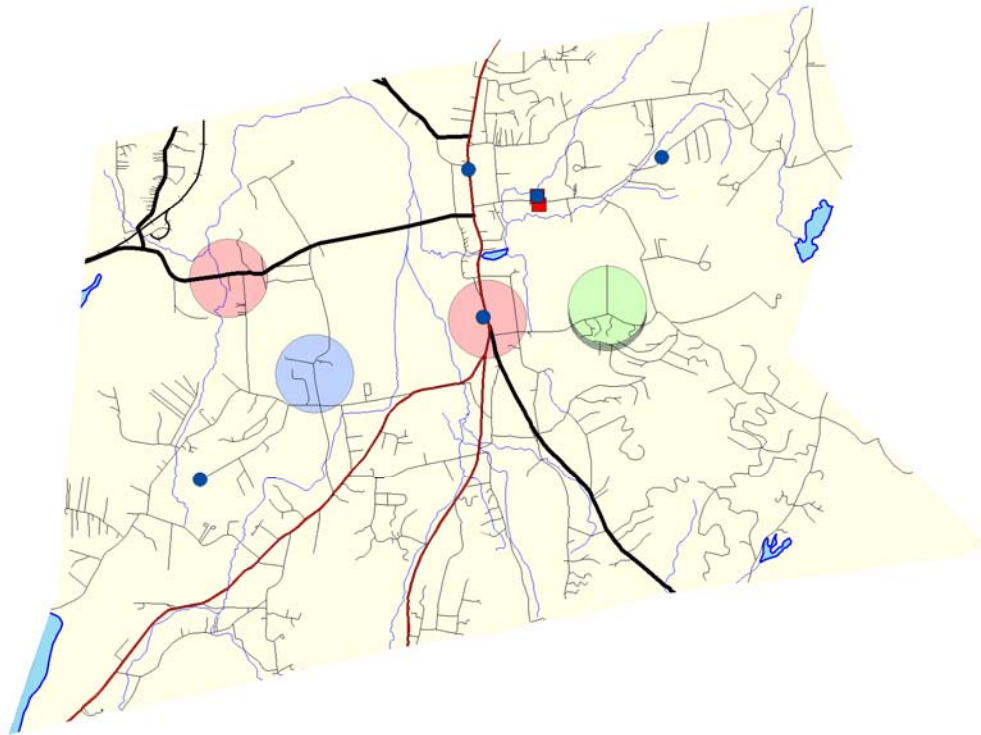


## CANAAN Drug-Free Zones



Prepared By:  
Office of Legislative Research  
November 14, 2005

## DURHAM Drug-Free Zones



Prepared By:  
Office of Legislative Research  
November 15, 2005

### Parole and DOC Early Release Programs

State law allows for inmates to be released early from prison on parole or other early release programs administered by DOC including transitional supervision and halfway house placements.

#### Parole

The Board of Pardons and Paroles has discretionary release authority over inmates sentenced to more than two years, except that offenders convicted of capital and other violent offenses (e.g., sexual assault in the first degree) are ineligible for parole. There are two statutory parole eligibility standards:

- offenders are required to serve at least 50 percent of their sentences; and
- offenders convicted of “serious, violent” offenses are required to serve at least 85 percent of their sentences.

Since 1999 (Public Act 99-196), the Board of Pardons and Paroles technically no longer factors the mandatory minimum term of a total aggregate sentence in calculating parole eligibility. The parole board determines which inmates are released and how long they must serve prior to release without consideration of the mandatory minimum sentence imposed by a judge. However, since many of the offenses subject to a mandatory minimum penalty are categorized as “serious, violent” offenses under parole board policy, offenders convicted of those crimes are required to serve 85 percent of their sentences to be eligible for parole. In many cases, the 85 percent time-served mark is at or past the mandatory minimum term of the total prison sentence.

#### DOC Early Release Program

**Transitional supervision.** The Department of Correction has discretionary release authority over inmates sentenced to two years or less and currently administers the transitional supervision (TS) program to grant early releases and supervises inmates in the community. The TS program is similar to parole in that inmates are required to serve 50 percent of their sentences to be eligible for release to community supervision.

**Halfway house.** DOC also grants early release to all inmates serving a sentence of any length through its community release to a halfway house program and re-entry furloughs. The correction commissioner is authorized to release any inmate to a variety of community treatment programs, halfway houses, or to approved community or private residences for educational or

employment purposes.<sup>23</sup> DOC policy allows for the early release from prison to these programs of inmates within 18 months of their discharge dates or voted-to-parole dates.<sup>24</sup>

**Re-entry furlough.** Re-entry furloughs are authorized to assist inmates transitioning to the community. DOC can grant up to a 30-day furlough. Re-entry furloughs are typically granted near or at the end of sentences.

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<sup>23</sup> Effective July 2004 (Public Act 04-234), the Board of Pardons and Paroles chairperson was also authorized to release inmates within 18 months of their parole release date to community-based residential program and residences or approved community residences. To date, the chairperson has not used this authority.

<sup>24</sup> In March 2005, in response to a high profile incident, DOC issued a directive requiring all inmates to serve at least 50 percent of their sentence to be eligible for community release to a halfway house. The department requested an opinion from the Office of the Attorney General as to whether it was statutorily required to impose this time-served standard for community release. In October 2005, the attorney general issued an opinion that the department was not required to impose a 50 percent time-served standard for the community release program.

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